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S. HRG. 98-1066

# PETROLEUM OVERCHARGE RESTITUTION ACT AND THE FEDERAL WEATHERIZATION PROGRAM

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## HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY CONSERVATION AND SUPPLY

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

## S. 2370

A BILL TO PROVIDE FOR DISTRIBUTION TO THE STATES OF CERTAIN AMOUNTS RESULTING FROM ENFORCEMENT OF THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973, AND FOR OTHER PURPOSES

AND

THE FEDERAL WEATHERIZATION PROGRAM

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JUNE 14, 1984

Printed for the use of the
Committee on Energy and Natural Resources

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JAMES A. MCCLURE and J. BENNETT JOHNSTON are Ex Officio Members of the Subcommittee

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# PETROLEUM OVERCHARGE RESTITUTION ACT AND THE FEDERAL WEATHERIZATION PROGRAM

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THURSDAY, JUNE 14, 1984

U.S. SENATE,
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SD-366, Dirksen Office Building, Hon. Lowell P. Weicker, Jr., presiding.

Present: Senators Weicker, Warner, Tsongas, and Bradley.

Also present: Allen Stayman, professional staff member; and James T. Bruce, counsel for the minority.

## OPENING STATEMENT OF HON. LOWELL P. WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. Today the Subcommittee on Energy Conservation and Supply will conduct a hearing on S. 2370, the Petroleum Overcharge Restitution Act, and oversight of the Federal Weatherization Program.

Before we begin, I would like to make just a few observations. As most of us here know, these issues are not new ones. I have been a strong supporter of the Federal energy conservation programs and have been involved over the years as these programs have outgrown many of their early problems.

They are now providing assistance not just to low-income households but to the entire Nation through new employment and a reduced demand for energy. Current news headlines continue to underscore the need for this Nation to reduce its dependence on unstable energy supplies. A strong Federal commitment to energy conservation is, therefore, an absolute necessity.

The administration proposes to create an oil overcharge restitution fund from which to fund the Federal Weatherization Program, the Schools and Hospitals Program, and the Low-Income Energy Assistance Program. Although I am encouraged by the administration's desire to now fund these programs which it has not always wanted to do, I have serious reservations about whether this is the way to do it.

For many years the courts and the Department of Energy's Office of Hearings and Appeals have been struggling with ways to provide indirect restitution to the millions of Americans who were overcharged under the Petroleum Allocation Act of 1973 but cannot be individually identified. Now we are being asked to alter this process and direct that only persons eligible for these three Federal energy programs shall receive indirect restitution for their injuries as a result of oil overcharges. The question has to be asked what of other groups who were overcharged?

Another and greater concern I have, and one which was raised during the congressional debate on the Warner amendment last year, is that the use of these funds for programs that Congress already intends to support is not restitution. Restitution is a payment to compensate for an injury. This legislation would merely replace dollar for dollar one funding source with another without any increase in benefits to compensate for past injury.

Finally, I am concerned that by providing the petroleum overcharge restitution fund as an alternative funding source for these programs we may find in 3 or 4 years when these funds are exhausted that the administration, whichever the administration present at the time, will not request alternative funding, and so these are some of the concerns I have, and hope we will be able to address them this morning. I will insert in the record the text of S. 2370 and a statement by Senator Cohen.

[The text of S. 2370 and a statement by Senator Cohen follow:]

II

98TH CONGRESS
2D SESSION

# S. 2370

To provide for distribution to the States of certain amounts resulting from enforcement of the Emergency Petroleum Allocation Act of 1973, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 29 (legislative day, FEBRUARY 27), 1984

Mr. MCCLURE (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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# A BILL

To provide for distribution to the States of certain amounts resulting from enforcement of the Emergency Petroleum Allocation Act of 1973, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Petroleum Overcharge Restitution Act".

## OVERCHARGE DISTRIBUTION PROCEDURES

SEC. 2. (a) In the manner provided by this Act, the Secretary of Energy shall distribute the following restitutionary amounts—

(1) amounts held in escrow on the date of enactment of this Act, and

(2) amounts received after the date of enactment of this Act,

which are held or received as a result of a settlement, order, or judgment (including a declaratory judgment) involving overcharges resulting from alleged petroleum pricing violations under the Emergency Petroleum Allocation Act of 1973.

(b) A settlement, order, or judgment described in subsection (a) that includes restitutionary amounts shall be referred to the Secretary of Energy who shall conduct a proceeding for the purpose of identifying and making restitution to persons who the Secretary determines sustained economic injury; however, in cases in which an administrative or judicial order or judgment entered before the date of enactment of this Act rests upon a determination that it is impossible or impractical to identify or to make direct restitution to the persons who sustained economic injury, a proceeding shall not be conducted under this subsection, and the restitutionary amounts not yet paid and distributed shall be deposited in the Fund established by section 3(a) of this Act.

(c) In cases in which a court has rendered or renders a judgment in favor of the Government for petroleum pricing violations under the Emergency Petroleum Allocation Act of

1973, the court shall order that any restitutionary amounts (including interest) not yet paid and distributed be paid to the Department of Energy to be held in escrow pending distribution in accordance with this Act.

(d) While the Department of Energy holds amounts in escrow pending the completion of the proceedings required by this section, the Secretary of Energy may place a portion of those amounts that the Secretary considers appropriate in the Department's minority-owned financial institution depository program.

### PETROLEUM OVERCHARGE RESTITUTION FUND

SEC. 3. (a) There is established in the Treasury of the United States a fund to be known as the Petroleum Overcharge Restitution Fund (referred to in this Act as the "Fund").

(b) There shall be deposited in the Fund restitutionary amounts described in section 2 of this Act that the Secretary of Energy determines—

(1) exceed amounts needed for refunds to persons who sustained economic injury from overcharges; or

(2) cannot be refunded to persons who sustained economic injury because they cannot reasonably be identified, or because the amount of injury such persons sustained cannot reasonably be determined or is so small that distribution is not reasonably feasible.

(c) Deposits into the Fund shall be made as soon as practicable after completion of the proceeding under section 2 of this Act, or as otherwise provided by this Act; however, escrow amounts that have been invested shall be deposited in the Fund in a manner that avoids the payment of penalties for premature withdrawal.

(d) When appropriations are made for a program listed in section 4 of this Act, the amount provided shall be derived from the Fund to the extent that amounts are available in the Fund. If amounts in the Fund are not sufficient to cover the appropriation made for such a program, the remaining amounts shall be derived from the general fund of the Treasury and shall be returned to the general fund to the extent that amounts become available in the Fund.

### AUTHORIZATION OF APPROPRIATIONS

SEC. 4. For each of the fiscal years 1985 through 1989 there is authorized to be appropriated for carrying out

(i) Part A of the Energy Conservation in Existing Buildings Act of 1976 (42 U.S.C. 6861–6873),

(ii) Part G of title III of the Energy Policy and Conservation Act (42 U.S.C. 6371–6371j), and

(iii) the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621–8629)

amounts that do not exceed the amount appropriated in fiscal year 1984 by Public Law 98–146 for the programs in clauses

(i) and (ii) and by Public Law 98–139 for the program in clause (iii). Amounts appropriated pursuant to this section may be made without fiscal year limitation.

○

# STATEMENT OF SENATOR WILLIAM S. COHEN

before the

Subcommittee on Energy Conservation and Supply

June 14, 1984

MR. CHAIRMAN, I am pleased to have the opportunity to present testimony before your Subcommittee today, as I have long had an interest in the federal weatherization program. I commend you, Mr. Chairman, for holding this hearing, as a discussion of the need for changes in the weatherization program is long overdue here in the Senate.

As you know, I have introduced legislation, S. 2629, which would make some necessary changes in the operation of the weatherization program such as requiring increased dissemination of information with the ultimate goal being improved program performance. With the expenditure of large sums of federal dollars as my bill anticipates, it is essential that we ensure that our weatherization money is being well-spent.

In this era of energy uncertainty for America, I can think of few federal programs which can accomplish more for both needy individuals hit hard by sky-rocketing home energy costs and for the federal government as well. By making improvements in home energy efficiency across the nation, the weatherization program lessens the national demand for energy in a long-term, permanent fashion and also assists the low-income segment of our population in meeting their basic energy costs.

Since its inception in 1977, the federal weatherization program has helped 1 million needy families reduce their home energy consumption by 20 per cent each. Energy conservation accomplished by such measures as the installation of insulation, weather-stripping, storm doors and windows, has helped lower our imported oil requirement from 46 per cent in 1978 to 28 per cent in 1983.

The contribution of conservation to our energy security cannot be underestimated. It is, I believe, the single most important step we can take to reduce oil imports, lower energy costs, preserve jobs, and lessen the environmental, health and safety risks often associated with energy use.

However, there are 13 million Americans -- I repeat, 13 million -- still eligible for and in need of federal weatherization assistance. The large majority of these individuals live in dwellings which have little or noe insulation and are in need of improvements to presently inefficient heating systems. The legislation I have sponsored will bring about a few changes in the current program that I believe are necessary if we are to continue to make it operate in the most effective manner.

First, by reauthorizing the program for ten years, we are making a statement of commitment on the need to complete the task of weatherizing the remaining 13 million homes nationwide. The federal investment required in S. 2629 will be returned during that ten year period and long afterwards as well. Typically, investing $1000 in the weatherization of a poor household can reduce annual energy bills for 20 years or more. These savings represent the equivalent of nearly 100 barrels of oil per household over that 20-year period.

Second, the bill contains strengthened language to ensure that adequate funds are used for program evaluation, monitoring and information transfer. This is an essential provision if we are to make the program applicable to the situations which exist in various states and counties. From the information gathered and evaluated as a result of this requirement, program administrators across the country can determine the best course of action in their particular area that will bring about the most constructive use of federal dollars.

Third, the bill establishes a two-year demonstration program for the weatherization of rental housing units, an area which has never been thoroughly addressed during the duration of the federal program. A large number of low-income individuals live in rented apartments, and there is little incentive for them, or for the unit owners, to install energy efficient improvements. In S. 2629, funds are allocated for the development of a rental unit weatherization program, and the Secretary of Energy is authorized to implement a grant program for proposed projects. The information derived from this test program will be circulated to all state and local weatherization program officers. I believe this requirement will result in a much more effective and meaningful federal program. It will ensure that the intent of the program is met to the fullest extent possible.

Finally, S. 2629 recognizes the reality of the low-income energy use situation by establishing an information program for manufactured housing and by allowing for the retrofit of inefficient furnaces as a method of weatherization. These two provisions will help target the program to those most in need of it, since

since many mobile homes are inhabited by low-income families and because old, leaky furnaces are a major contribution to the needless high energy costs for those who own their own homes.

As I said at the start, there is a demonstrated need for the continuation of this federal program at an accelerated level. As a Senator from a cold-weather state, I have long been sensitive to the severe personal hardship increases in home energy prices have had on many households over the past several years. I know the Chairman shares my concerns and I think it time that others consider our point of view.

There are grim statistics which support our contention, and I would like to cite them for the Subcommittee's benefit.

-- In 47 states and the District of Columbia, there was, for elderly persons living on Social Security Insurance, $61 or less remaining each week for all other living expenses during the three coldest months, after their home energy costs were paid.

-- Remaining weekly balances in the 50 states and D.C. ranged from a hign of $94 to an incredible low of $21 in my home state of Maine.

Twenty-one dollars to make it through the week for elderly individuals who also pay high sums for medical treatment and prescriptions -- this is a shocking statistic. These same individuals spend fully 71 per cent of their monthly income on energy costs during the winter months.

There is a crying need for action here, and permanent action is what is accomplished through the weatherization program. It deserves to be reauthorized.

The cost of residential fuel oil has tripled from the 1976 average price of 40.6 cents a gallon to the present average price of $1.19 per gallon. Natural gas prices have quadrupled in four years. The vulnerability of our elderly and low income citizens to the vagaries of the international energy market is something few of us here in the Senate can truly identify with, but that all of us should work to alleviate.

I believe that a stronger commitment to the federal weatherization program is essential at this time. For this reason, and several others, I am not supportive of the proposed legislation also under review here today: the Petroleum Overcharge Restitution Act. This legislation does damage to our commitment in two ways.

First, it removes the federal Low Income Weatherization and Low Income Home Energy Assistance programs from the yearly appropriations cycle by providing that these programs will be funded out of the Petroleum Overcharge Restitution Fund. Should the money in the Fund run out, which is a virtual certainty, then we will have quite the fight on our hands to restore these valuable programs to their former status as line items in their respective appropriations bills. Should we lose that fight, then these programs will simply cease to exist, and that is a situation of great detriment to the many need households looking to weatherization and fuel assistance for help.

Second, the proposed legislation locks in the funding for the Weatherization and LIHEAP programs at FY 84 levels for the duration of the Fund's existence. Not only is this unrealistic in terms of program needs, but it serves to undermine the commitment we need to establish: the weatherization of the remaining 13 million needy homes nationwide.

The longer we wait to accomplish this task, the more costly it will become for the federal government to provide fuel assistance and the more difficult it will become for a certain segment of our society to pay their energy bills. We should not take a step backwards and destroy the work that has been accomplished by weatherization and fuel assistance, and that is the effect of the Petroleum Overcharge Restitution Act.

During the winter months, low-income families and the elderly are forced to come to terms with a difficult set of questions. Where will the money come from for the next purchase of heating oil? What can I skimp on today so I might have enough money on hand tomorrow to pay for heating oil? Can I do without the medicine the doctor prescribed? Can I skimp on the nutrition I require?

We should not be in the business of making the answers to these questions more painful. A renewed commitment to energy efficiency in the homes of less fortunate Americans will go far to ease the heavy burdens these individuals bear.

I urge this Subcommittee to take a hard look at the

Petroleum Overcharge Restitution Act and its impact on the federal Weathrization and Low Income Home Energy Assistance programs.

Again, Mr. Chairman, I commend you for holding these hearings and allowing for a much-needed discussion of the issue of improved energy efficiency. I look forward to working with you in the future on this matter.

Senator **WEICKER**. Now we will proceed immediately with our witnesses, the first being Hon. Pat Collins, Under Secretary of the Department of Energy. He is accompanied by Mr. Theodore Garrish, the general counsel, and there is also a third person at the table, so if he would please identify himself?

## STATEMENT OF HON. WILLIAM PATRICK COLLINS, UNDER SECRETARY, DEPARTMENT OF ENERGY, ACCOMPANIED BY THEODORE J. GARRISH, GENERAL COUNSEL; AND FRANK STEWART, ACTING DIRECTOR, OFFICE OF STATE AND LOCAL ASSISTANCE PROGRAMS

Mr. **COLLINS**. Thank you very much, Mr. Chairman. I also would like to recognize Mr. Frank Stewart who is the Acting Director of our Office of State and Local Assistance Programs.

If I may, Mr. Chairman, I would like to submit my full statement for the record.

Senator **WEICKER**. Your full statement will be included in its entirety in the record of the proceeding.

Mr. **COLLINS**. Thank you. I appreciate the opportunity to appear before you today to discuss the proposed S. 2370, the Petroleum Overcharge Restitution Act, and the current status of the Weatherization Assistance Program.

I think we have come a ways toward addressing some of the concerns expressed by this subcommittee and the other Members of Congress about the Weatherization Program in our new rules and some of the initiatives that we have taken subsequent to the publishing of those rules. The context in which we appear today is the National Energy Policy Plan, published last October and announced by the Secretary and the President. By making these funds available to the States under such programs as the Weatherization Assistance Program, S. 2370 supports the overall goal of national energy policy which is to foster an adequate supply of energy at reasonable costs.

The specific purpose of the proposed legislation is to establish an orderly, step-by-step procedure to distribute oil overcharge amounts resulting from violations of the Emergency Petroleum Allocation Act of 1973 which are now held in escrow, and amounts received in the future as the result of settlements, orders, and judgments.

For a number of years there has been considerable dispute over the most appropriate means of distributing those funds collected by the Department in settlement of overcharges resulting from alleged pricing and allocation violations, of which approximately $1.189 billion has been recovered through settlement agreements.

In the past, in circumstances where the economically injured parties could not be identified or distribution to injured parties was not practical, the Department over the years employed a variety of forms of indirect restitution as a means of affording general compensation to persons thought to have been affected adversely by alleged overcharges.

The proposed legislation resolves the problem of finding the most appropriate method of disbursing overcharge funds where identification of the injured parties is not possible by providing an orderly restitutionary procedure which would eliminate uncertainty and inconsistent results while returning control of spending for Federal programs to the Congress and reducing the time consumed and the costs of litigation over appropriate remedies.

In addition, Mr. Chairman, it would authorize continuation of the placement of a portion of the escrow amounts with minority-owned banks and thrift institutions. To achieve these objectives, the legislation would establish an orderly three-phased procedure. In the first phase, the Department of Energy attempts to identify persons who sustained economic injury and ascertain the amount of injury sustained in order to provide direct restitution.

In the second phase, the amounts that exceed those needed for direct restitution or amounts that cannot be refunded are deposited in the Petroleum Overcharge Restitution Fund established in the U.S. Treasury by this act.

In the third phase, beginning in fiscal year 1985, indirect restitution is provided by making the fund assets available to States for distribution under three programs—Low-Income Home Energy Assistance Program administered by the Department of Health and Human Services, the Weatherization Assistance Program, and the Schools and Hospitals Program, both administered by the Department of Energy. In order to provide a much needed continuity for those programs, the proposal authorizes fiscal year 1985 through 1989 appropriations at fiscal year 1984 levels to be paid from the overcharge fund. This will provide an annual authorization of $1.875 billion for the Energy Assistance Program, $190 million for the Weatherization Program, and $48 million for the Schools and Hospitals Program. Appropriations made available for these programs will be derived from the fund to the extent the amounts are available in the fund.

If the fund assets are insufficient, the balance of appropriations will come from the general fund of the Treasury. As additional amounts are placed in the fund, they will be used for repayment to the general fund.

To give an idea of the current status of the escrow accounts, as of June 8, 1984, there was in excess of $475 million, most of which has been made available through agency procedures to afford claimants an opportunity for a hearing as to whether they were injured. Estimated potential additional recoveries is approximately $5 to $6 billion, either through settlements or litigation.

While these funds are not subject to the Warner amendment, the proposal would continue the indirect restitution approach of the

Warner amendment. It will provide a more orderly and phased approach to ensure that injured persons receive the benefits of restitution either directly or indirectly.

Thus S. 2370 will address the concerns about the continuation of these programs by providing a stable, secure authorization of funding through fiscal year 1989 in a way that would continue the programs without adding to the Federal budget deficit.

Let me turn briefly, if I may, to the status of the Weatherization Assistance Program which I mentioned we are very pleased with as a result of the reception of our rule that was published in January and our subsequent initiatives.

Established by the Energy Conservation and Production Act, the Weatherization Program has been improved by several actions taken over the years, the latest of which was January 27, 1984. With this rule, the Department has provided a regulatory framework within which the States can maximize production and energy efficiency based upon their individual needs and circumstances.

The rule increases the coverage of eligible rental housing stock, increases flexibility of the States in selecting weatherization measures, and reduces the administrative burden on the States by consolidating paperwork requirements. The results have been gratifying, as the 1984 State plans generally appear to have taken advantage of the new regulatory flexibility. All 1984 grants have been awarded, and we have every reason to believe that the new rule is working well. In fact, over the 6-month period from October 1983 to March 1984, an average of 21,000 homes per month were weatherized at an average expenditure rate of $21.5 million per month.

To date we have awarded $1.212 billion to States, and an estimated 1.2 million homes have been weatherized. We are confident that the proposal before you today provides the stability and security that will allow these programs to continue these outstanding accomplishments.

Mr. Chairman, let me say that we are very pleased to have the input that we have gotten from the Congress on these programs. We feel we are coming closer to the interests of the Members of Congress in general and particularly this subcommittee.

I appreciate the opportunity to make this presentation to you today.

[The prepared statement of Mr. Collins follows:]

STATEMENT OF

WILLIAM PATRICK COLLINS

UNDER SECRETARY

U.S. DEPARTMENT OF ENERGY

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

ENERGY CONSERVATION AND SUPPLY SUBCOMMITTEE

U.S. SENATE

June 14, 1984

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today and provide information on the proposed S. 2370, the "Petroleum Overcharge Restitution Act," and also to speak about the current status of the Weatherization Assistance Program.

I will first address the "Petroleum Overcharge Restitution Act." Let me provide you with some background information on what led the Department to propose this legislation.

For a number of years, there has been considerable dispute over the most appropriate means of distributing certain funds collected by the Department of Energy in settlement of overcharges resulting from alleged pricing and allocation violations under the Emergency Petroleum Allocation Act of 1973. Approximately $1.189 billion of overcharges has been recovered through settlement aggreements. Of this amount, approximately $575 million has been disbursed, of which approximately $101 million of this amount went to the U.S. Treasury.

The remaining funds, more than $600 million, have been held by the Government in deposit fund escrow accounts in the U.S. Treasury pending the determination of proper distribution. Of that amount, $200 million was distributed to the States last year for use in specific energy programs under the Warner amendment (Section 155 of Public Law 97-377). As of April 30, 1984, there was more than $484 million (including interest) in the escrow accounts, of which $460 million has been made available through agency procedures to afford claimants an opportunity for a hearing as to whether they were injured. There are estimated potential additional recoveries of approximately $5 to $6 billion, either through settlements or litigation. In one case, now on appeal, a Federal District court has ordered nearly $1.7 billion disbursed to the States. In another, overcharges totaling more than $1 billion (including interest) have been found; that court has referred the case to the Department for findings of fact as to whether injured claimants can be identified and as to the agency's remedial recommendations before the court fashions a restitutionary remedy.

The mandatory petroleum price control program was in effect until January 1981, when President Reagan ended price controls on petroleum products. In enforcing the program, the Department's Economic Regulatory Administration performed audits to identify violators of the regulations and, if it believed violations occurred, brought enforcement actions against them. The cases often were resolved through consent orders with the companies. The consent order might provide for various types of remedies, including direct cash refunds to overcharged purchasers. If it was difficult to identify the injured parties, the consent order might specify an amount to be paid into an escrow account, until a just and equitable method could be determined for distributing the funds to parties who were overcharged. Those determinations frequently have been very difficult or impossible because petroleum products may have been bought and resold several times with limited information available about the extent to which overcharges were passed on to subsequent purchasers.

In circumstances where the economically injured parties could not be identified or distribution to injured parties was not practical, the Department over the years employed a variety of forms of indirect restitution as a means of affording general compensation to persons thought to have been affected adversely by alleged overcharges. These remedies have included company administered claim funds, price rollbacks, payments in the form of crude oil provided to the Strategic Petroleum Reserve, price reductions on fuel sold to utilities and public transportation entities, payments to low-income heating oil consumers through charities, payments to State governments, and payments to State Governments for general energy purposes, and payments directly to the U.S. Treasury.

Adding to the difficulty in fashioning appropriate overcharge remedies is the fact that, while the statutes from which the Department draws its authority concerning remedies speak generally in restitution terms, they do not provide policy guidance as to the specific forms restitution should take in cases in which it is not feasible to make restitution directly to the persons injured by an alleged overcharge. A majority of overcharge cases fit this description. Until the enactment in 1982 of the Warner Amendment, which provided for a one time distribution of $200 million to the States for certain energy programs, there was no Congressional guidance as to which remedies might be preferred as a matter of public policy where direct restitution could not be made.

The Department believes that indirect restitution resulting from overcharges should, as a matter of policy, be subject to Congressional direction and processes. It is the Congress, rather than the courts, which should determine spending priorities for Federal programs. We strongly support distribution of indirect restitution through the States in the manner set forth in S. 2370. Given the large amount of potential recoveries, the extreme difficulty in arriving at an appropriate remedy, and the protracted and costly litigation with uncertain results, congressional guidance in statutory form is necessary and desirable. To that end, the Department strongly urges enactment of S. 2370.

Now let me describe what the proposed legislation does.

The proposed legislation resolves the problem of finding the most appropriate method of disbursing overcharge funds when injured parties cannot be identified or direct restitution is impracticable. It provides an orderly, restitutionary procedure for disbursing overcharges now held in escrow and to be received in the future. It would provide a single remedy to eliminate uncertainty and inconsistent results. It would return control of spending for Federal programs to the Congress and would reduce, if not eliminate, the time-consuming and costly litigation over appropriate remedies. In addition, it would authorize continuation, during the interim period that the Department holds overcharges in escrow, of the placement of a portion of the escrow amounts with minority-owned banks and thrift institutions. To date, approximately $27 million has been placed with minority-owned institutions pending final disbursement of the escrow funds. This highly successful, short-term program provides capital for use in minority-owned institutions.

To achieve those purposes the legislation contains the following major provisions:

First, it establishes an orderly, step-by-step procedure for distributing overcharge amounts now held in escrow and amounts received in the future as a result of settlements, orders, and judgments.

In the first phase, the Department of Energy attempts to identify persons who sustained economic injury and to ascertain the amount of injury sustained in order to provide direct restitution. It is contemplated that the Department's Office of Hearings and Appeals will perform this function using its special refund procedures (10 C.F.R. 205, Subpart V). This phase would not be used to duplicate prior proceedings where an existing order or judgment rests upon a determination that it is impossible or impractical to identify or make direct restitution to the persons who sustained economic injury.

In the second phase, amounts that exceed those needed for direct restitution, or amounts that cannot be refunded, are deposited in the Petroleum Overcharge Restitution Fund established in the U.S. Treasury by this Act.

In the third phase, beginning in Fiscal Year 1985, indirect restitution is provided by making Fund assets available to the States for distribution under three programs:

- Low-Income Home Energy Assistance Program administered by the Department of Health and Human Services,
- Weatherization Assistance Program administered by the Department of Energy, and
- Schools and Hospitals Grant Program administered by the Department of Energy.

Second, the legislation provides clear guidance to courts in pending and future cases by directing payment of restitutionary amounts to the Department of Energy for distribution in accordance with this Act when the court finds for the Government in an overcharge case.

Third, the proposal provides Congressional direction and control by authorizing Fiscal Year 1985-89 appropriations for low-income home energy assistance, weatherization, and schools and hospitals grants at Fiscal Year 1984 levels, to be paid from the overcharge fund. This will establish a much-needed funding stability for these programs. If the Fund assets are insufficient, the balance of appropriations will be made available from the general fund of the Treasury, and as additional amounts are placed in the Fund, they shall be used for repayment to the general fund of the Treasury.

Finally, as mentioned earlier, the proposal authorizes continued placement of escrow amounts with minority owned banks and thrift institutions pending final distribution under the Act.

A key feature of this legislative proposal is the disbursement by the States of indirect restitution for overcharges. We believe that disbursement by the States, in the context of this legislation, under existing energy programs provides the most efficient and effective method of administering overcharge distribution. It provides continuity and stability for the three important programs I mentioned earlier -- the Weatherization Assistance Program, the Schools & Hospitals Grant Program, and the Low-Income Home Energy Assistance Program. In providing consistent funding levels for these programs for a five-year period, the proposed legislation allows State officials to plan and administer the programs efficiently and systematically, and it ensures the sustained availability of assistance to the low income families, particularly the elderly and the handicapped, and to schools and hospitals, which have experienced sharply increased energy costs and are particularly hampered in trying to meet those costs.

S. 2370 responds to the very real concern that these programs continue and provides State officials with the resources to administer them well. It also provides a way to continue these programs without adding to the Federal budget deficit. The proposal also continues the indirect restitution approach used successfully in several earlier consent orders and under the Warner Amendment. It does so subject to continuing Congressional oversight and involvement without imposing heavier burdens on the taxpayer and the Treasury. I believe that disbursing overcharge funds to the States in the manner set forth in the proposed legislation is the best way of resolving a difficult problem.

Now let me turn to a discussion of the Weatherization Assistance Program.

The Weatherization Assistance Program (WAP) was established by the Energy Conservation and Production Act (ECPA), and subsequently amended by the National Energy Conservation Policy Act (NECPA) and the Energy Security Act (ESA).

Until 1979, the effort was an amalgam of activities of three agencies: the Community Services Administration, with authority over Community Action Agencies; the Department of Labor, with authority over Federally-financed employment, and the Department of Energy, with responsibility for overall program management.

In August 1979, the Interagency Action Plan coordinated these activities to give more flexibility to the program's authority to hire labor in the marketplace. Previously the program's labor services were to be supplied largely by the local CETA pool.

Subsequent rulemakings have further improved operation of the program. Two are of particular importance: the February, 1980 Interim Final Rule, and the January, 1984 Final Rule. The February, 1980 action, to stimulate and increase production, expanded the use of program funds to hire labor or to engage contractors. It increased the maximum allowable expenditure per dwelling unit from $800 to a maximum of $1,600 to cover labor costs; allowed the use of low-cost/no-cost measures; established more flexible expenditure ceilings for the States for materials, program support, and labor; established greater flexibility for weatherizing rental units in multifamily buildings; and permitted DOE to make tentative allocations among the States.

I am particularly proud of DOE's latest rule, issued on January 27 of this year. With this new rule the Department has provided a regulatory framework within which the States can maximize production and energy efficiency based upon their individual needs and circumstances. This rule also lessens the administrative burden by reducing paperwork. Briefly, the rule: 1) adds new weatherization measures, including mechanical options, and updates standards for weatherization materials to give States more flexibility to select the most cost-effective measures for their areas; 2) allows States to use alternate energy audit procedures that meet or exceed Project Retro-Tech's standards, the only procedure previously allowed; 3) allows weatherization of two- and four-unit buildings when 50 percent of the units are eligible, a reduction from the previous 66 percent requirement; 4) requires an inspection of the work performed on each weatherized unit after completion; and 5) simplifies the grant application process.

The 1984 State Plans generally appeared to take advantage of the new regulatory flexibilities except for those which would require a longer implementation period, as in the development of an alternative energy audit. All 1984 grants have been awarded, and we have every reason to believe that the new rule is working well.

From 1977 through 1978, an estimated 96,000 homes were weatherized. In 1979, 144,000 homes were completed; 311,000 homes in 1980; and 161,000 homes in 1981. Over the 6 month period October, 1983 through March, 1984 we averaged 21,000 homes per month, at an average expenditure rate of $21.5 million per month. To date, we have awarded $1,212 billion to States, and an estimated 1,200,000 homes have been weatherized.

This concludes my prepared testimony. I would be happy to respond at this time to any questions you may have. Thank you again for the opportunity to appear before you today.

Senator **WEICKER**. Thank you very much. How do you respond to the comment that I raised in my opening statement as to, if indeed, restitution is being made to those who were overcharged? And if we don't do that, forgetting any particular, for a minute laying aside any social injustice that might occur, might we not run into a constitutional problem.

Mr. **COLLINS**. Yes, Mr. Chairman, our first responsibility I think, of course, is to return the amount, any amounts to identified victims. That is primary throughout our considerations in the Department, of course, as you know, and some of these have been hard to identify. I think on the constitutional question I would like to ask our general counsel to comment.

Mr. **GARRISH**. If I could, I would like to say a couple of things in regard to restitution. By restitution we are referring to the people that need to receive a direct restitution. When you can identify the person that has been overcharged, our programs will get the money back to that individual.

For the rest of the money, which will be directed to those people that we find impossible to identify, it is really one man's judgment versus another man's as to what is an appropriate way that that money can be distributed.

That is the reason why I think that we felt that this bill was essential. In other words, when we have completed a process either in OHA or in the courts and determined that we could not identify who in fact had been overcharged, it is those particular funds which we thought were essential to have some congressional guidelines as to what Congress felt would be an appropriate way to spend the funds or an appropriate group to receive those funds. By definition we are in that sort of gray area where one man's judgment may differ from another man's, and that is the particular problem that we tried to face with this legislation. Those particular programs in the legislation are the ones we came up with.

As far as the constitutional questions are concerned which relate directly to the *Exxon* case, a number of questions have been raised as to whether or not we can take the Exxon moneys and include those moneys directly into the fund. We have investigated that, and we have analyzed the legal implications of whether or not that is feasible to accomplish this result. We have come to the conclusion that until a final judgment is issued after the mandates are received from the Court of Appeals, there are no vested rights involved are there no Constitution problems involved. I should point out, however, that there may be some anticipation as to whether or not certain individuals may think that they have an entitlement to those moneys, but in fact there is no legal rights involved. There are no legal rights that are actually vested until that final mandate is issued, and that is the reason why that particular provision was put into the bill. It is very similar, of course, to any case that is on appeal. There is no final judgment or vested rights until the appeal process is complete.

It is no different than taking a case to the Court of Appeals or to the Supreme Court until those mandates are finally issued by the courts.

Senator **Weicker**. Well now let's explore that because this, to me, is of key importance, as to what final form the legislation is going to take.

I don't want anybody in the room to be offended that two lawyers are here because, as you know, when lawyers talk we have to indulge in hypotheticals in order to see whether what we are trying to achieve is legal, or whether it is constitutional.

The fact that the money is going to the poor, to hospitals and to schools, doesn't make it legal. It sounds good, but you know, that really is not the basis for determining whether or not the plan here is a legal plan.

For example, maybe it is that a group of rich people who were the ones that were overcharged and they don't fall in the poor category and they are not in the hospital, they are not in the school, et cetera.

Is there a plan, therefore, which was devised which gives the money to an entirely different group? Is that proper, legal? Will it withstand the constitutional test? That is the question I have to ask.

Mr. **Garrish**. Well, I think the answer is that if a particular group or a class of purchasers, can prove with some evidence that they in fact were overcharged, they can receive a direct compensation from OHA. Our process is intended to achieve that. That would include a class of purchasers of any particular kind, or any State, for that matter if they were to suffer some kind of direct injury.

By definition, after that process of identification is complete and we cannot identify who those overcharged persons might be, then it becomes a matter of judgment as to appropriate means to distribute the funds. There are a variety of ways that the courts have approached that.

Senator **Weicker**. In other words, in the plan that is proposed here, there is an initial period of time when anybody can go over the money if they feel they have been aggrieved, is that correct?

Mr. **Garrish**. That is correct. There is a process that is what is known as subpart V procedure whereby the moneys are received by the Office of Hearings and Appeals. The Office of Hearings and Appeals then goes through a procedure. They put that procedure on the the record for comment. Anyone that thinks they are entitled can come and discuss the procedure. Following a final ruling as to what the procedures are, there will be a claim process in which people may come forward and make their claims.

Senator **Weicker**. Then that has a cutoff point, right?

Mr. **Garrish**. That is correct.

Senator **Weicker**. When that cutoff point is reached, what you are then saying is we will then shift to see that this money is allocated to these other programs, whatever is left in that pot goes to these programs, is that right?

Mr. **Garrish**. Whatever is left would then go into the fund for the programs as authorized by this particular legislation.

Senator **Weicker**. All right. You have answered the first question. Now the second question is—it gets away from the law for a minute, and that is a matter of policy.

As a believer in all of these programs, as one who is constantly seeking moneys for them, why should we use this fund for those programs instead of seeking additional funds for the programs?

Mr. **Collins**. Well, I think, Mr. Chairman, what was brought home very vividly to me when I met with the State energy directors and the weatherization assistance officials last fall was that part of the overall problem with these programs is that we had relatively high turnover of staff that was involved because there was a lack of continuity and stability in the process, the year-to-year type of process waiting for the Congress to act.

They said they wanted, primarily, continuity and stability. So in this procedure what we have done, and certainly with the guarantee of using the general fund—if the settlements are not of the size to fully fund these programs and they don't come in soon enough—is to guarantee that stability and continuity month by month for a 5-year period so that hopefully we can have better administration of these programs. Of course, our primary focus is the recipients, and that they will know that there is a long-term commitment to these programs. The impression from meeting with the State energy directors and others is that this will improve the management immensely, and the feeling of those who are recipients of this, and it is going to go beyond this fiscal year.

Senator **Weicker**. Last year when Congress debated the Warner amendment which distributed $200 million to the States for specific energy programs, it was made clear that those funds were intended to be added to congressional appropriations, not to replace them.

In your opinion, does this legislative proposal run counter to congressional intent as expressed in the Warner amendment?

Mr. **Collins**. Well, I don't believe so, Mr. Chairman, because I think also the legislative history there certainly showed that the Congress intended the Warner procedure to be a 1-year process, and that, therefore, this is a long-term commitment in this area, and a proposal I think that will guarantee better management, and the sense of well-being of the individuals who are recipients of these programs.

Senator WEICKER. We understand from your testimony and from the fact that the budget request for next year includes level funding for DOE weatherization, that the administration finds this program to be effective and successful.

Is that a fair analysis?

Mr. COLLINS. I think that is a fair analysis, sir.

Senator WEICKER. You feel that the DOE rulemaking issued on January 27 is perfected? No legislative changes are required?

Mr. COLLINS. I think there is a possibility of us coming to you, Mr. Chairman, and suggesting two or three possible relatively minor changes to give us a little bit more flexibility.

For example, on the $150 repair limit, Congress changed that in 1980 from $100 to $150, and we may want to change that slightly again.

Senator WEICKER. What is the status now of the *Exxon* case? Where does that sit?

Mr. GARRISH. The *Exxon* case is on appeal before the temporary emergency court of appeals. It was argued this month in San Francisco. We would expect a decision relatively soon in that case. Then depending on how it comes out, I would suspect one party or the other—there were numerous parties in the case obviously—would appeal to the Supreme Court and petition for a writ of certiorari.

I would expect that that process will take approximately 1 year to complete, once we have a final order from TECA. I would suspect an order from the court of appeals and a decision within several months, relatively quickly.

Senator WEICKER. There are no other funds—are there other funds in addition to those in the *Exxon* case?

Mr. GARRISH. Rather substantial.

Senator WEICKER. All right, and what is the status of those funds in terms of court procedure?

Mr. GARRISH. The *Exxon* case seems to be on a much faster schedule. We have the case called the *Stripper Well* case which is in Kansas. That has approximately $1 billion currently before the Office of Hearings and Appeals. That case was remanded to the OHA for recommendations back to the court in Kansas as to what the appropriate restitution to overcharged individuals might be. That is a very substantial case.

We have numerous other cases at various stages either at OHA, in the courts. We have a $250 million case—*Getty Oil* case—in Delaware. We have numerous cases that we are currently settling before the ERA. They are in every imaginable stage, but the *Exxon* case seems to be the one that is on the fastest schedule.

Senator WEICKER. And it is your feeling then that the public is best served if we get this legislation in place before the money is available in order that there is a system for its distribution in place?

Mr. COLLINS. Very definitely, Mr. Chairman. As the general counsel has mentioned, there have been several, half dozen proposals in the past on this, and I think that if we can provide this legislative umbrella that we can fit these funds within, I still don't think quite frankly that we will have enough funds fast enough through the court system, and that we will have to draw on the general fund, and that is why we put that provision in there. But I think it is going to immediately stabilize the management situation of this program, and we are going to get managers, probably better managers for longer periods of time through the various State offices.

Senator WEICKER. Where does this sit in the House right now? Has it been presented in the House?

Mr. COLLINS. There has been no action on it in the House yet.

Senator WEICKER. All right. I thank you very much for your testimony. I would like to ask further questions, but I just received word from the majority leader that we have legislation that will commence on the floor in an hour, so I better get to the other witnesses.

Thank you very much.

Senator TSONGAS. Mr. Chairman——

Senator WEICKER. I beg your pardon.

Senator TSONGAS. I realize I'm leaving, but——

Senator WEICKER. I didn't see you come in—my very good friend, Senator Tsongas; you go right ahead, Senator.

Senator TSONGAS. It's bad enough being a minority around here, but a lameduck minority.

Senator WEICKER. There are more on my side of the fence who accuse me of being on your side of the fence, so believe me, this Senator will not in any way try to diminish your opportunities to speak because usually what you say makes a hell of a lot of sense.

Senator TSONGAS. I think I'll stop at that! Mr. Chairman, I have a list of questions here I would like to leave for a response.

One is: What assurance do we have that there has been a deal struck with the administration that moneys will be spent irrespective of how these various court matters come out?

There is some talk of $11 billion over 5 years, whatever. Have you gotten OMB's assurance that those moneys will be forthcoming?

Mr. COLLINS. Yes, we have, Senator Tsongas, and in addition to what we say in the budget documents and in our legislation, it is in our long-term budget forecast within the administration for the 5-year period.

Senator TSONGAS. And that includes OMB as well?

Mr. COLLINS. That is correct.

Senator TSONGAS. Is that expected to remain true whether there be a second Reagan term?

Mr. COLLINS. Yes, sir.

Senator TSONGAS. The other question I wanted to raise, one of the issues that I have been involved in is programs like UDAG and so forth where you use Federal moneys to leverage in private sector commitments.

Several years ago we set up a model program like that in my home community that involved putting a certain amount of money into a pot and then using the banks and other private sector individuals to leverage. I think it has worked out very well.

What plans do you have to use the kind of UDAG leverage concept in weatherization?

Mr. COLLINS. We are very excited about that part of our program. We are actually going to have at least three States, for example, this year in a leveraged type of a situation, and we have already concluded that type of arrangement with the State of Minnesota, and we are working in Pennsylvania and Maine. In your State, for example, we are doing some cost sharing work with an organization in Boston, and I have heard about the programs at Lowell, and I am going to go up to look at that myself the first part of this next month. We are looking at every possibility for expanding our efforts here and leveraging our participation, and we have three different proposals now, one with using our community action agencies or service groups for the most part here, and get them into this business.

No. 2 would be to include the banks and the community action agencies and others in our leverage programs. Quite frankly, there is nothing that we aren't pursuing that I know of that is on the vanguard in this type of area to leverage our funds because we are very conscious of that. We are pleased that we weatherized 1 million homes, but we know that we have 13 million at least to do, and we are going to have to, I think, use every resource that we can to do this as quickly as possible because the savings are significant in one part, and second, the effect that it has on the individuals is really outstanding, and I think it is one of the best programs that we have.

Senator TSONGAS. Are these revolving funds?

Mr. COLLINS. Not per se; they are actually third party participation, and as you say, I think the program that I described might fit into that as we perceive it, to some degree.

Senator TSONGAS. I wish you would give some thought to that because what we are dealing with here basically is a windfall. The likelihood is that no matter who gets elected in November 1985, is going to see a real budget crunch.

My own view is that a budget freeze will probably be enacted in 1985, and to the extent that these moneys can be put into a kind of endowment as opposed to a one-shot appropriation, you can have some hope down the road, and if you could perhaps spend a moment on that idea it might be worthwhile.

Mr. COLLINS. We are very interested. We appreciate it. Thank you very much.

Senator TSONGAS. Thank you, Mr. Chairman.

Senator WEICKER. Thank you, Senator Tsongas. Will you also—you might submit to the committee your recommendations vis-a-vis improvement in the Weatherization Program. I would like to have those.

Mr. COLLINS. We appreciate the opportunity to do that, Mr. Chairman. Thank you.

[The information follows:]

The Weatherization Assistance Program's current legislation already allows for a large measure of flexibility sufficient to manage the program efficiently and effectively. For example, the January 27, 1984 rule encourages the Weatherization Assistance Program to be responsive to local needs and incorporates changes in technology. Where feasible DOE prefers to make further changes to the program through the rule-making process, and while we are not prepared to recommend any legislative changes at this time, we are continually reviewing the need for legislative changes.

Senator **Weicker**. The panel now scheduled to appear before the committee consists of Mr. Robert Burgess, president of the Connecticut Community Action Agency Asscciation. He is also director of Norwalk Economic Opportunity Now; Diana Ortiz, the assistant secretary of the Executive Office of the Community Development, Coalition of Northeastern Governors in Boston; Mr. Charles Hill, National Consumer Law Center in Washington, DC, accompanied by Douglas Parker, director, Institute for Public Representation; and James McKee, president, Philadelphia Gas Works and Utility Emergency Service, PA, if you will all make yourselves comfortable, the committee greatly appreciates your taking of your time to testify before us.

I think we will go in the order that I have indicated. All statements, in their entirety will be included in the record, and I would appreciate it if you could synopsize each of your statements so that there might be time back and forth which is so helpful to the committee in determining the shape of this legislation, so first we will have Mr. Burgess. Nice to have you here, and you may proceed.

## STATEMENT OF ROBERT BURGESS, EXECUTIVE DIRECTOR, NORWALK ECONOMIC OPPORTUNITY NOW, INC.

Mr. **Burgess**. Thank you, Mr. Chairman. My name is Robert Burgess.

Senator **Weicker**. Pull that microphone down to your mouth. I can hear you but the persons in the back of the room may not be able to.

Mr. **Burgess**. I am the executive director of the Norwalk Economic Opportunity Now, and president of the Connecticut Association. I am representing the National Community Action Foundation which is the legislative representative for the Nation's 930 community action agencies. The community action agencies are the subgrantees for 85 percent of the weatherization program as well as providers of multiple other economic opportunity programs for the Nation's poor.

We feel strongly that oil overcharge funds should not be used to supplement regular program funds as the administration has proposed in Senate bill 2370.

The petroleum overcharge proposal does not remedy the activities of oil companies by making restitution to consumers who were overcharged. Instead it takes funds. Exxon, Mobil, et cetera, have collected illegally from consumers and treats them as if they were regular taxes to be used by the Treasury for financing ongoing governmental activity. This not only perpetuates the abuse, it does nothing to help the Low-Income Energy Programs in question.

Next, we have important concerns about the Department of Energy Low-Income Weatherization Program, and we are extremely grateful to you, Mr. Chairman, for providing this opportunity for review of this program. Your longstanding record of concern and support for weatherization in this community and the Appropriations Committee and on the Senate floor is a major reason this vital service to the poor has survived repeated attempts to annihilate it.

Senator Tsongas, too, has been a major supporter of these programs, and we welcome his support.

Our agency will weatherize 180 units this year, and we have households on our waiting lists. We believe energy efficiency is increased by 21 percent for gas and 25 percent for oil, or a savings of about $390 for oil and $230 for gas for each household each year based on these figures. This should be compared to our average energy assistance benefit of $314.

I would like to submit for your record a copy of the Connecticut study which documents 35-percent energy savings in our program. As you know, the Oak Ridge National Lab has estimated that each $100,000 spent on weatherization creates 5.5 full-time jobs.

Mr. Chairman, the DOE program is vitally necessary. It is efficient. It is well managed at the Federal level, and in most States, and it is cost effective, and it is reducing the growth of energy bills that would otherwise overwhelm the poor.

Further, the Department has this year modernized its regulations in ways which further improve operations. However, we need some changes in the law which would give the weatherization crew on the spot more flexibility to assess peculiar problems of the house they are working on and do whatever is necessary to make them weatherproof. These changes are independent of the level of Federal spending. They have nothing to do with giving—they only have to do with giving more local control at the local level.

The following reforms are critically important and are not remedied by the recent DOE new rules. We need more flexibility to make heating systems improvement and replacement. This focuses on important sources of energy savings. While a few States allow the use of LIHEAP funds for furnace work, most do not. Combined with insulation, efficiency improvements of the heating system can mean savings of up to 30 to 40 percent in a unit.

While DOE's new rules are a significant advance in flexibility, both bills permit wider choice of equipment and techniques.

To permit appropriate investments in heating systems as well as infiltration based on these onsite evaluations, changes in the outdated ceiling on expenditures is essential. Current law permits expenditures of 1,000 dollars' worth with waivers to $1,600. The waiver process is cumbersome. It is not administered comparably in all various parts of the regions, and does not, therefore, allow adequate State and local discretion. New legislation should change this to an average of $1,600 per unit.

Another crucial improvement in the legislation is removal of the limit on repair costs. Because the poorest of the poor live in housing which is sometimes unimaginable to the average American, the building's condition may threaten the weatherization improvements installed. If the roof, doors, and windows, and skirting do not fit, insulation can be destroyed. The $150 limit is too arbitrary to cover all units' legitimates needs.

The Federal program must recognize the real nature of the eligible unit and permit those repairs essential to protecting the Federal investment. We have provided the subcommittee members with some photographs of units we typically see to give graphic evidence of our problem. Eliminating the inflexible ratios between material and labor is important. Today, if a crew finds a real need for labor-intensive measures like furnace repair, they are required to add equipment in order to keep the required 60/40 ratio.

Legislation should at least allow each State to establish an average 60/40 labor/material standard rather than a strict per house limit.

Mr. Chairman, some other irregularities in the law should also be remedied as recommended by the National Community Action Foundation, and we are submitting for the subcommittee's consideration a list of key reforms needed to be made for the program to be better. In recognition of the current realities, they do not include any increase in next year's Federal spending. The changes are rather geared to modernizing the program, building on its proven record, and increase in local control and flexibility.

We hope you will be able to help us make these legislative changes in the very near future. In closing, I would like to submit some material to help the subcommittee understand the impact of current funding levels on our program.

We are fully and painfully aware of the spending restrictions imposed by the current budget crisis and their impact on the elderly poor. We simply ask the committee to recognize the position we are in and to make new funding sources a priority when possible.

As I have said before, Mr. Chairman, your leadership has been critical in assuring us at least the base for operations we have today, and again we want to thank you very much for your support.

[The prepared statement of Mr. Burgess follows:]

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TESTIMONY OF

ROBERT BURGESS, EXECUTIVE DIRECTOR

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SOUTH NORWALK, CONNECTICUT

REPRESENTING

THE NATIONAL COMMUNITY ACTION FOUNDATION

SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

HEARING ON S.2370 AND LOW INCOME WEATHERIZATION

JUNE 14, 1984

NATIONAL COMMUNITY ACTION FOUNDATION
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My name is Robert Burgess and I am the Executive Director of Norwalk Economic Opportunity Now Inc., South Norwalk, Connecticut and President of the Community Action for Connecticut Association. I am representing the National Community Action Foundation, the legislative representative for the nation's 930 Community Action Agencies. Community Action Agencies are the subgrantees for 85% of the weatherization program as well as providers of multiple other economic opportunity programs for the nation's poor.

First, we feel strongly that oil overcharge funds should not be used to supplement regular program funds as the Administration has proposed in S.2370.

- The "PORF" proposal does not remedy the activities of oil companies by making "restitution" to consumers who were overcharged. Instead, it takes funds, Exxon, Mobil et al have collected illegally from consumers and treats them as if they were regular taxes to be used by the Treasury for financing ongoing governmental activities.

- It not only perpetuates the abuse, it does nothing to help the low income energy programs in question. The Administration proposes to freeze 1984 levels for LIHEAP and weatherization, and just replaces on-budget funds with this off-budget device. Not only are these levels too low as a practical matter, but as a matter of legal principle the wrong done by the oil companies should be redressed as provided by law. Funds should be added to low income programs as they were in fiscal year 1983 under the Warner amendment.

- It also puts our programs at a disadvantage in the long run because in the first year that no more PORF funds are available, LIHEAP and weatherization would have to rejoin the competition for on-budget funding from a position of having had little or none in previous years. These programs and the poor they serve have a tough enough fight already in the current struggle for scarce federal funds.

Next, we have important concerns about the Department of Energy Low Income Weatherization Program, and we are extremely grateful to you, Mr. Chairman for providing this opportunity for review of the program. You own longstanding record of concern and support for weatherization as you have expressed it in this Committee, in the Appropriations Committee and on the Senate floor is a major reason this vital service to the poor has survived repeated attempts to annihilate it. We who operate the program believe that this is the moment to improve and strengthen this very effective program even in the context of constrained federal resources.

Our agency will weatherize 180 units this year and we have households on our waiting lists. We believe energy efficiency is increased by 21% for gas and 25% for oil or savings of about $390 for oil and $230 for gas for each household each year based on HHS figures.

In Connecticut, 12,888 units have been completed from 1975 through 1983. The State's waiting list is still 57,017 strong. Almost 50% of units completed are elderly units. About 61% of Connecticut's weatherization funds come from the energy assistance block grant.

Mr. Chairman, the DOE program is vitally necessary; it is efficient; it is well-managed at the federal level and by most states; it is cost-effective and is reducing the growth in energy bills that would otherwise overwhelm the poor. Further, the Department has this year modernized its regulations in ways which further improve operations. However, a combination of certain practices and requirements of law which are too specific impede local programs from dealing with the wide variety of realities and problems which characterize this dilepidated housing stock. We need some changes in law which will give the crew on the spot flexibility to assess the peculiar problems of the house they are working on and do whatever is necessary to made it weatherproof. These changes are independent of the level of federal spending; they have to do with giving more local control to deal with local variability.

Both, the Weatherization Act of 1983, S.1953 and the Weatherization andEmployment Act of 1983, HR.2615 provide an intelligent approach to improving a program that has already proven itself. The following reforms are critically important and are not remedied by recent DOE action.

The emphasis on heating system improvements focuses on the most important source of energy savings. While a few states allow the use of LIHEAP funds for furnace work, most do not. Few have been able to make a major commitment of State funds for this purpose. And it should be noted that the growing desperate need for fuel bill payments is steadily eroding the availability of any LIHEAP funds.

However, the importance of furnace improvements cannot be overstated. Combined with insulation, efficiency improvements of the heating system can mean savings of up to 30% or 40% in a unit. It is foolish and short sighted to leave antiquated or even dangerous old equipment in a unit while making a major investment in insulation. While DOE's new rules are a significant advance in flexibility, both bills permit wider choice of equipment and techniques. While it must be recognized that these innovations mean funds are needed to purchase and install them and, especially, to retrain workers, the pay off will be very high to the low income household. Usually, we will not replace entire heating systems because of the disproportionate costs; it is the flexibility to install equipment as justified by savings which is the crucial element.

It is realistic to make major investments in a very dilapidated unit in a cold climate belonging to a very elderly person and achieve possibly life-saving energy efficiency improvements which pay off in three to five years, while a less destitute household in an apartment may achieve similar savings with a much smaller expenditure. The professional judgement of the auditor and work crew based on standards of payback of investment and household need ought to be, as they are under your legislation, the ultimate arbiter of the "package" of conservation measures.

To permit appropriate investments in heating systems as well as infiltration, based on these on-site evaluations, change in the outdated ceiling on expenditures is essential. Current law permits expenditures of $1000 with waivers to $1600 if approved for each unit by a Policy Advisory Committee and the DOE Regional Office. The waiver process is cumbersome, is not administered comparably in the various regions and does not, therefore, allow adequate state and local discretion. New legislation should change it to a $1600 average for all units in each state's program. DOE and states can then develop reasonable, general standards for administering expenditure decisions. This new policy would allow a wide variety of improvements, suited to the household needs, while remaining within the general confines of current dollar levels.

We recognize concerns that increase permissible expenditures from those established nearly half a decade ago may reduce production. However, states and Community Action Agencies are under the same pressure as Congress to help as many people as possible with our limited funds. Those of us on the "front line" daily see more persons in real and heartrending need than we can help. It is not our intent to "gold plate" some units while ignoring others; we do intend to reduce bills as much as possible for the greatest number of households in need. Proof that we have done so to date exists; even with waivers to $1600 allowed, the average cost of a DOE weatherization is $950. We just do not spend more than we have to.

I am submitting for the Committee a study performed last year for the National Community Action Foundation and the New England Community Action Agencies by the firm of Eisenberg and Power which, first, reviews available technical studies and shows that increases in any investment, especially in heating systems, provide the most reliable savings and, second, illustrates the immense national variation among eight weatherization programs which have been judged by DOE and the states to be equally effective national "models." This wide range of "correct" ways to meet the energy needs of different parts of the nation's low income population is the real reason we need more flexibility.

Another crucial improvement in the legislation is removing the limit on repair costs. Because the poorest of the poor live in housing which is sometimes unimaginable to the average American, the building's condition may threaten the weatherization improvements installed. If the roof, doors, windows and/or skirting do not fit, insulation can be destroyed. The $150 limit is too arbitrary to cover all units' legitimate needs. The federal program must recognize the real nature of the eligible units and permit those repairs essential to protecting the federal investment. We have provided the Subcommittee members with some photographs of the units we typically see to give graphic evidence of our problems.

Eliminating the inflexible ratios between materials and labor means that weatherization crews can select the package of measures that achieves the highest payback. Today, the rules require no more than 60/40 for labor/ material division. If they find a real need for labor intensive measures, like furnace repairs, then they are required to add equipment in order to justify the work. In Connecticut and other cold states, we always need lots of insulation and glazing, so the problem is less acute, but in milder climates this is not always the case. For example, sometimes a storm window must be hand made to fit units that are no longer really rectangular, and the labor can far exceed the required materials, while remaining well below the overall ceiling. The audit instrument with follow-up inspection should determine the package of measures which will make permanent energy efficient improvements to the unit. Legislation should at least allow each state to establish an average 60/40 labor/material standard rather than a strict per house limit.

Some other irrationalities in the law should also be remedied, such as the prohibition on helping some of the poorest of some households who got some weatherization under the FY 77-79 CSA program but nowhere near as much as others in their neighborhood have been allowed since 1980. Similarly, the requirement that DOE go through a full rulemaking to put new materials on the list of approved measures is slowing integration of new technology in this market. It took DOE three years to prepare the most recent rule. Another question the Subcommittee should consider is the unrealistic limit of 5% on administrative costs on small programs. The costs of the extensive audits and bookkeeping we must and should perform are not so very different in a small agency from those of a large agency.

Mr. Chairman, the National Community Action Foundation is submitting for your Subcommittee's consideration a list of the key reforms needed to make a good program better. In recognition of the current realities, they do not include any increases in next year's federal spending. The changes are, rather geared to modernizing the program, building on its proven record, and increasing local control and flexibility. We hope you will be able to help us make these legislative changes in the very near future.

In closing, I would like to submit some material to help the Subcommittee understand the impact of current funding levels on our work.

In the past, expenditures and production rates have been twice as high, as the table below shows:

DOE Weatherization Funds

| Calendar Year | 1980 | 1981 | 1982 | 1983 3/31/84 | 1984 Begins 4/1/84 |
|---|---|---|---|---|---|
| Appropriated (in million $) | 199 | 175 | 143 | 245 | 190 |
| Outlays (Includes carryover in million $) | 238.6* | 232.9** | 150.6 | 23/month | |
| Units Completed | 311,268 | 249,370 | 154,370 | 20,000/month | |

*Materials and program support. CETA (DOL) paid labor.

**Materials, program support and small percentage of labor CETA paid most of labor.

Weatherization activities were reduced much more than simple appropriations indicate because DOE and LIHEAP funds have to cover labor previously covered by CETA. The current programs, even with LIHEAP transfers, are therefore, dramatically lower than capacity.

Labor costs typically range from 40%-60% of material and support costs. Thus, while $238.6 million was available for materials and program support (e.g. stockpiling, van maintenance, delivery of workers and materials to site, etc.) in 1980, in 1983, only about $125 million in DOE funding was available for these purposes - the rest having to go for labor previously funded by CETA. If LIHEAP funding transfers are also considered, another $72.4 million may have been available to cover materials.

Many state programs are using reduced work crews or part-time crews to keep a program going all year at reduced levels so as to avoid a funding gap.

The program has already operated at a higher capacity than the one we are proposing. In the last months of 1980 the program was spending $35 million a month. On a yearly basis, that's the equivalent of $400 million dollars. The funding was almost entirely devoted to materials and program support and does not include the CETA labor costs. The total outlay would have been $800 million.

We are fully and painfully aware of the spending restrictions imposed by the current budget crisis and their impact on the elderly poor. We simply ask the Committee to recognize the position we are in and to make new funding sources a priority, when possible. As I have said before, Mr. Chairman, your leadership has been critical in assuring us at least the base for operations we have today. Thank you very much.

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# Results Of A Survey And Analysis

# Performed On Behalf Of The

# New England Community Action Association

By

Eisenberg And Power

2101 L Street N. W. • Suite 906 • Wash., D. C. • 20037 • (202) 775-0223

# Issues In The Future Of Weatherization Programs

## Introduction

This report to the New England Community Action Agencies presents an inventory and analysis of the most successful weatherization programs as identified by the Department of Energy. In addition to presenting the data on the costs and benefits of these programs for the use of New England's program operators, this report places the results in the context, first, of the existing previous research on weatherization efforts and, second, in a framework of the major issues being raised by federal, state and local policy-makers about the future of the program. Thus, this data offers both a model for comparing programs nationwide and a basis for formulating some general answers to the questions program operators may be called upon to answer.

The Department of Energy's Low Income Weatherization Program has been a remarkably successful survivor of the federal budget wars of the past two years. It is one of the few discretionary social programs to resist significant funding cuts or elimination during the first several years of the Reagan administration. But this past success should not be taken as predictive that the Weatherization Program will continue to operate at existing funding levels. In fact, with continued recession and widening budget deficits, it is safe to assume that those responsible for proposing and legislating future budgets will return to the surviving programs with ever greater attention in search of a few more dollars to save.

The Weatherization Program is likely to be subject to scrutiny from two directions. First, there are those in both the bureaucracy and Congress who maintain that the Weatherization Program can be cut back while still achieving a high rate of savings in energy per weatherized household. This is because it is assumed that the first dollars expended per household on weatherization are the most cost effective. Advocates of this view cite the high savings rate achieved by ACTION's Low Cost/No Cost weatherization program as proof that a significant budget cut would not significantly diminish the effectiveness of the DOE Weatherization Program. The second source of scrutiny is from those who believe that a larger number of households should be weatherized at a lower average expenditure level per household under the same assumption, namely, that the first dollars spent save the most energy. In the first case there is likely to be an attempt to cut back the actual dollar volume available to the program. In the second case there is likely to be a renewed attempt to modify the program rules to set a lower ceiling for expenditures per household under the program so that more households will be weatherized for the same total budget.

Implications For New Englanders

If such issues are to be raised and such policy changes adopted by the Congress or the administration, it is important that New Englanders at least have the benefit of some hard facts from the field indicating what the impact of program changes or budget cuts may be. If addition, the collection of such data nationwide after years of weatherization experience offers the opportunity for program operators in the region to compare their program's performance to that of agencies selected as national models.

In order to provide this information we have evaluated data on the effectiveness of weatherization programs provided by the Community Services Administration/National Bureau of Standards Optimal Weatherization Demonstration Project and The Consumer Energy Council of America's data evaluation of the DOE Low Income Weatherization program to see what light might be shed on these subjects. We have supplemented this data with our own survey of eight of the nation's most effective low income weatherization agencies who provided us with written responses to the questionnaire (included in this document as Attachment 1). Based on these data sources we conclude that:

- The present weatherization program yields savings in energy consumed per household of 26.6% on the average for CAPS surveyed by Eisenberg and Power.
- The weighted average cost of weatherization per household in our survey was $1,210 in 1981.
- Weatherization is not funded at an optimal level. CSA/NBS data indicate that cost effective savings of 38% per household can be achieved by increasing weatherization budgets.
- Claims that energy consumption savings of 15% to 20% per household can be achieved on a consistent basis for expenditures of only $100-200 are not verified by the available data for the DOE Weatherization Program, ACTION Program or our survey of CAPS.
- While average savings per household under the DOE Weatherization Program of 26.7% are indicated by the Consumer Energy Council's analysis, the variability around this average is significant. This means that many recipients of the weatherization expenditures may benefit relatively little from the program at the present cost ceilings.

- The only way to reduce this variability appears to be a significant increase rather then a decrease in per household expenditures under the weatherization program.
- With the shift from CETA to market cost labor, the costs of taking measures to limit infiltration have risen to the point where they are comparable to those of interventions using higher cost materials like insulating the attic. There are no cheap fixes.
- The Eisenberg and Power survey indicates that almost half of the CAPS surveyed could not carry out two or more conservation interventions for less then $750 per household. A reduction in the ceiling for expenditures per household would leave substantial numbers of cost effective weatherization tasks undone.

Data Sources

There are three sources of data used in this analysis. The first is an evaluation of the potential effectiveness of low income weatherization conducted by the National Bureau of Standards with funding from the Community Services Administration. The NBS weatherized and evaluated 153 dwellings in 12 cities. The average cost of an NBS weatherization was $1,742 in 1980 dollars with an average annual energy savings of 30.5%.

The second source was a survey of the DOE Weatherization Program conducted by the Consumer Energy Council of America (1980) involving local evaluations of approximately 520 households in 10 different cities. The average cost of these weatherizations was $986 with annual energy savings of 26.7%. The location of both NBS and DOE survey cities and the number of households evaluated in each city are shown in Attachment 2.

Third, using the questionnaire shown in Attachment 1 (on behalf of the National Community Action Foundation), Eisenberg and Power conducted a survey of eight Community Action Programs selected on the basis of high evaluations from both DOE and State Weatherization Directors as superior weatherization program managers. These CAPS are located in Luzerne County, Pennsylvania, Brockton, Massachusetts, Hyannis, Massachusetts, Portland, Oregon, Salt Lake City, Utah, Vadnais Heights, Minnesota, Appleton City, Missouri and Athens, Ohio. For a complete list of those answering the survey with contact names and telephone numbers please see Attachment 3. Survey respondents weatherized a total of 8,524 households in 1981 with a weighted average expenditure per household of $1,209.94.

In the case of both the Consumer Energy Council data as well as that derived from the NCAF survey, the weatherizing agency provided its own evaluation of the effectiveness of previous weatherization efforts. In 6 of the 8 cases in the NCAF survey, the results reflect the examination of actual vendor bills adjusted for variations in weather severity from season to season. In the other two cases, no methodology for estimating energy savings was specified.

In addition to providing data on energy savings as the result of low income weatherization, the NCAF study inquired as to the costs of weatherization. Respondents provided data on the average costs per household as well as component costs such as labor, material, support and administrative expenses. Respondents also provided data on the costs of individual weatherization interventions. Among the most common interventions are blocking infiltration, insulating the attic, tuning the furnace and installing storm windows. The costs of these individual measures and other specific results of the survey can be found in Attachment 4.

## Data Analysis

As noted in Attachment 4, table 1, the average energy savings reported in the Eisenberg and Power/NCAF survey was 26.6% per annum which compares well for consistency with the Consumer Energy Council's 26.7% for DOE weatherization. Table 1 also shows the number of households weatherized by each CAP in the survey as well as the average cost of weatherization in each locality. This data is in contrast to the CSA/NBS data which indicated that savings of 39.7% per annum could be achieved for an average expenditure of $2,101 (1980 dollars) per annum.[1]

Of even greater interest is the fact that the NBS data shows a very low coefficient of variation of .19 as compared to a coefficient of variation of .38 for DOE weatherizations averaging $986 (1980 dollars) in cost per household. The coefficient of variation is a measure of the degree to which a large number of data points deviate from their average. The scale varies from 0 to 1 with higher fractions showing higher variability and lower ones showing less variability. In regards to weatherization, high variability, as in the DOE data, means that while average savings may be 27.7%, a large number of households will have savings that are much higher or lower. By contrast, the NBS data, with its low variability not only reflects a higher average savings per household but a much greater likelihood that most will achieve close to the average in savings. Thus, while the energy savings per dollar may go down as weatherization expenditures rise, program effectiveness goes up. Higher expenditure levels are likely to be cost effective while doing a better job of insuring that every low income household served actually benefits from the weatherization performed.

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[1] Cooper, Mark; "A Comprehensive Analysis Of The Costs And Benefits Of Low Income Weatherization And Its Potential Relationship To Low Income Energy Assistance." Washington, D.C., 1980, p.29.

It should also be noted that the key element in improving the efficiency and effectiveness of NBS weatherization was retrofitting and improving heating, cooling and ventilation (HVAC) systems. This was the single intervention that seems to correlate positively with reduced variability. The average cost of this kind of HVAC retrofit under the NBS program was $862 in 1980 dollars. This means that improving the reliability of the weatherization program would require significant dollar increments above existing ceiling levels and could not possibly be incorporated into existing or reduced ceiling levels.

Realistically one recognizes that in the present environment, even though it might make sense to increase weatherization appropriations and ceilings, the opposite is more likely to happen. Tables 2 through 5 of Attachment 4 show the average expenditures by various CAPS to conduct specific interventions as reported in the NCAF survey. These tables cover the most commonly reported interventions which are infiltration, insulation of the attic, storm windows and furnace tune-ups.

In reviewing this data, one quickly notes that there are wide variations among the various CAPS in their per household expenditures for the same interventions. For example, in Athens, Ohio, the cost of attic insulation averages $643.06 while in Luzerne, Pennsylvania, the cost is $220 and in Portland, Oregon, it is $137. The reasons for these variations are many. They include variations in housing structures, material and labor costs, and housing size to name but a few. The point is that it would be a mistake to assume that a given type or level of activity will be possible nationwide or even throughout New England under reduced expenditure ceilings. This applies to all the most common interventions, including infiltration.

Some policy-makers believe that infiltration measures, primarily caulking and weatherstripping, can be performed more cheaply then other interventions and that these are the most effective of weatherization activities. It is assumed that they can form the core of a reduced-cost weatherization program that still yields significant energy savings. This is not necessarily the case. One NBS household weatherized in New Jersey showed a reduction of 59% in heating load but almost all of it was attributed to storm windows and attic and wall insulation. Infiltration measures made only a small contribution.[2] This shows that weatherization effectiveness is highly idosyncratic and really depends on the requirements of each structure.

Of equal significance is the high cost associated with infiltration measures in the NCAF survey. Table 2 shows an average cost of $305 per household where infiltration measures were used as compared to $360 for attic insulation, $271 for storm windows and $137 for furnace tune-ups. As the DOE Weatherization Program has shifted from CETA to market-priced labor, the labor component of weatherization costs has risen. This means that labor intensive measures such as caulking and weatherstripping are not as cost effective as they once were relative to the alternatives available. As these average costs per weatherization measure indicate, there is no cheap effective weatherization package. There is likewise no surefire reliable single measure that can be taken with all weatherization units that can insure a given level of savings. It cannot be said that infiltration measures or any other measures for that matter, when taken alone, will yield a reliable and predicatable savings level. There is no data base that we know of that supports such a contention.

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[2] Residential Energy Conservation, Volume I OTA, Washington, D.C., 20510, p.50.

What then of those who claim that investments of as little as $50 will yield energy savings of 15% to 20% per annum?

## Low Cost/No Cost

The federally funded effort to promote formal low-cost/no-cost weatherization through ACTION agency grants to local communities has produced claims of energy savings higher than those confirmed for some full-scale weatherization programs. As these claims are based in large part on experience in the Fitchburg, Massachusetts experiment in 1979, New England CAPs have a particular interest in knowing whether such results could be replicated in neighboring areas. And of course, there is a national concern in knowing whether full-scale weatherization can be largely replaced by low-cost measures.

ACTION states in its "Description of the Community Energy Project " (January 1982) that the Fitchburg CAPs program reduced the total home energy consumption of 3,000 households by an average of 14%, using kits of material costing from $15-50. As an average oil using home in Fitchburg in 1979 could easily have had $1,500 in home energy costs, this means annual savings of $210 are being claimed, or a payback period of 4 weeks on the investment.

A DOE brochure, "Energy Savers, Low Cost, No Cost" (1982) states "... we think you can save 25 percent of your fuel oil, gas and electricity bills, ... and all of (these ideas) can be carried out for $100 or less."

A dozen low cost measures are then outlined. Assuming a national average home energy bill of over $1,000 in 1982, savings of over $250 a year are being promised. This is a payback period of under 5 months.

In addition to the CAPs interviewed for the body of this study, several CAPs with experience in low-cost/no-cost programs were sampled including Montachusett Opportunity Council, the originator of the ACTION model. Certain conclusions were held unanimously:

- The ACTION/ DOE energy savings statistics were not based on any study, energy audit, engineering reviews or other formal analysis.
- The real cost of low-cost/no-cost far exceeds the kit price. CAP support and administrative costs are high, as the program is considered to be useless without

intensive training and public information. Other local agencies have made significant in-kind contributions to support ACTION programs. Most important, no price is assigned to labor in the DOE/ACTION papers. Program operators report many recipients, especially the elderly and handicapped, require workers to help use the kits. While volunteers have been available for some ACTION efforts, CAPs must use their regular weatherization workforce for ongoing low-cost/no-cost efforts. Labor, transportation and program support costs are a much larger multiple of low-cost materials costs than of normal weatherization costs.

- The short life of kit materials further limits the utility of low-cost measures. Caulking and other window infiltration barriers in particular, may only last a few months. The real cost of the measures, therefore, should include regular replacement of materials.
- The cost of successive replacement or upgrading of low-cost measures including tracking of households through two or more crew visits which would be necessary if either the measures are to be maintained or replaced by more energy efficient improvements should be considered as part of the life cycle cost of a low-cost/no-cost program.

## The Potential For Low-Cost/No-Cost

CAPs which have run successful low-cost programs advocate continuing these efforts, particularly where no volunteer installation is required, for specific and limited purposes including:

- Stopgap help for housholds waiting for weatherization crews.
- Adjunct to full scale weatherization which can save time of work crew.
- Adjunct to energy assistance or crisis intervention payments.

There is universal agreement that State and DOE program rules should permit regular program funds to be spent for kits where the local program operator finds they can effectively be used as "crisis intervention" for a unit in need of inexpensive plugging of heat losses.

## Income Levels Of Populations Served

CAPs surveyed lacked the data necessary to estimate the incomes of households served. Interview data suggests a large proportion of the households fall between the eligibility ceiling of 125% of poverty and that under 50% of OMB poverty level, but quantitative data to confirm this finding is not available.

Conclusions

New Englanders can draw a number of lessons from the findings of this survey of model programs:

- There is wide variation among highly successful programs with respect to the measures used and the costs of a program. These differences exist even within a single state, and are generally attributed by program operators to the need to fit the weatherization package to individual building types. Thus, household savings range from 15-34%, per household total average costs from $640.17 - 2,023.89, attic insulation costs from $131 - 720, storm windows from $31 - 168, furnace tune-ups from $70 - 275 and infiltration measures from $109 - 881. No one program is on the high-cost end of all these items. In other words, no single cost measure indicates the efficiency of a program and a wide range of costs can all be part of highly efficient programs.
- There is little uniformity in the accounting, costing or savings evaluations methodology used by successful agencies. While each agency seems internally consistent in quantification of its program, there is no uniform, national body of information which consistently reports program elements in the

same way. Thus, much of the variation among programs reported in all the major weatherization studies is unexplained. This signals program operators that programs are universally tailored to specific local conditions and that numerous formulae "work".

It also signals that no reliable data is available to indicate to policymakers what the impact of any specified level of cost ceiling would be.

- Despite a misleading public relations campaign, no program and no analyst has discovered a low-cost alternative to effective full weatherization. Indeed, our review confirms that the cost of achieving high energy savings is increasing and that only the higher cost installations can be expected to reliably produce optimal weatherization savings.

NATIONAL COMMUNITY ACTION FOUNDATION

Attachment I

NCAF/Eisenberg & Power Weatherization Survey

Name of Agency________________________________________

Street____________________________________________

City________________________State____________Zip______

Telephone - Area Code________________

Name of Weatherization Director_____________________________

Name of Person completing this survey__________________________

Telephone - Area Code________________

1) How many households did you weatherize in 1981? __________________

How many do you expect to do in 1982? ______________________

2) What was the average cost per household - broken down into materials, labor, program support and general/administrative categories if possible?

| Material Cost | Labor Cost | Program Support | G/A Cost | Total Average |
|---|---|---|---|---|

3) What are the most common individual conservation measures taken by you? What is the average cost of each and what are the estimated labor, material and support costs that comprise that average? (If more space is needed, please use back)

| Conservation Measure | Material Cost | Labor Cost | Program Support | Total |
|---|---|---|---|---|
| 1) | | | | |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |
| 6) | | | | |
| 7) | | | | |
| 8) | | | | |

4) Please you provide an estimate of average energy savings, as a percentage of preweatherization consumption, resulting from your weatherization efforts? Please describe how these estimates were made. For example, was a survey of recipients conducted? Were actual heating bills reviewed? Were degree day adjustments between years made?

5) In reviewing program effectiveness, have you been able to identify which individual conservation measures yield the best energy savings results and can you assign a level of energy savings to each of them? If it is possible to estimate savings for individual measures, please briefly describe how this is done? (Use back if necessary)

| Best Conservation Measure | Energy Savings and Method of Estimation |
|---|---|
| 1) | |
| 2) | |
| 3) | |
| 4) | |

6) Suppose you were given total cost ceilings of $100, $250, $500 or $750 dollars per household. What do you estimate could be done to the average household and how much energy would it save? (Please assume you would be weatherizing the same number of households as under last year's funding level when you estimate administrative costs).

| Conservation Measures | $100 | $250 | $500 | $750 |
|---|---|---|---|---|
| 1) | | | | |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| Estimated Savings<br>% of Consumption | | | | |

7) Assume your total funding level remains the same but that you are asked to weatherize a larger number of households under the ceilings listed in question number six ($100, $250, $500, $750). How would this effect your administrative and support costs per household?

To what extent would an increase in such costs effect the number and quality of conservation measures you can install?

8) What are the income levels of your weatherization recipients? Please use the federal percentage of poverty descriptions. E.g., how many are below 75%, how many are below 100%, and how many below 125% of the OMB poverty level which is provided below for your convenience.

| Family Size | Farm | Non-Farm |
|---|---|---|
| 1 | $4,010 | $4,680 |
| 2 | 4,310 | 6,220 |
| 3 | 6,610 | 7,760 |
| 4 | 7,910 | 9,930 |
| 5 | 9,210 | 10,840 |
| 6 | 10,510 | 12,380 |

9) What percentage are homeowners or elderly and can you break these two categories into the same 75%, 100%, 125% of poverty classifications listed in question number eight?

10) Do you have a waiting list for weatherization and if so is it limited to a certain number or does it contain all properly certified applicants?

Does the waiting list population follow the same proportion of poverty income classification that you listed in response to question number eight and if not, how does it vary?

11) If you have had experience with the use of low-cost, no-cost measures:

a) Can you estimate the savings that can be expected from implementing such a program?

b) It has been claimed that a $50 material investment can result in energy savings of 15-20%. Please comment.

c) What is the expected life of low-cost, no-cost improvements in your projects?

(Please feel free to add additional pages for your answers)

## Attachment 2
## Data Sources

### NBS/CSA Weatherizations

| City | # of Units | 1980 $ Invested | Energy Savings % |
|---|---|---|---|
| Atlanta, GA | 10 | 961 | 24 |
| Charleston, SC | 14 | 1,096 | 27 |
| Oakland, CA | 8 | 283 | 7 |
| St. Louis, MO | 20 | 1,927 | 8 |
| Minneapolis, MN | 17 | 1,927 | 22 |
| Washington, D.C. | 4 | 3,214 | 33 |
| Tacoma, WA | 10 | 1,957 | 47 |
| Easton, PA | 12 | 1,027 | 26 |
| Chicago, IL | 16 | 2,378 | 41 |
| Colorado Springs, CO | 17 | 2,037 | 50 |
| Portland, ME | 12 | 2,291 | 40 |
| Fargo, ND | 13 | 1,802 | 41 |
| Average | | $1,742 | 30.5% |

### DOE Weatherizations

| | | | |
|---|---|---|---|
| Luzerne, PA | 30 | 900 | 36 |
| Minnesota | 19 | 945 | 8 |
| Spokane, WA | 19 | 1,191 | 33 |
| Kentucky | 239 | 810 | 10 |
| Virginia | 76 | 1,047 | 32 |
| Utah | 43 | 882 | 28 |
| Michigan | 57 | 834 | 40 |
| Duluth, MN | 10 | 1,000 | 34 |
| Wisconsin | 14 | 643 | 21 |
| Indiana | 31 | 1,427 | 32 |
| Average | | $ 986 | 26.7% |

Source: Consumer Energy Council of America

## Attachment 3

## Respondents To NCAF/Eisenberg & Power Survey

1. Commission On Economic Opportunity Of Luzerne County
   211-213 South Main Street
   Wilkes-Barre, Pennsylvania 18701
   (717) 826-0510
   Contact: Germano Astolfi

2. Self Help, Inc.
   232 Main Street
   Brockton, Massachusetts 02401
   (617) 588-5440
   Contact: Jean Bauer

3. Housing Assistance Corporation
   77 Winter Street
   Hyannis, Massachusetts 02672
   (617) 771-5400
   Contact: David Fuller

4. North Community Action Council
   6965 North Fessenten Street
   Portland, Oregon 97203
   (503) 286-8375
   Contact: Paul Lund

5. Salt Lake Area Community Action Programs, Inc.
   764 South 200 West
   Salt Lake City, Utah 84101
   (801) 359-2444
   Contact: Kathryn F. Keel

6. Ramsey Action Program, Inc.
   3220 Labore Road
   Vadnais Heights, Minnesota 55110
   (612) 482-7749
   Contact: Michael McAlister

7. West Central Missouri Rural Development Corporation
   106 West 4th, P.O. Box 125
   Appleton City, Missouri 64724
   (816) 476-2185
   Contact: Lila Foster

8. Corporation For Ohio Appalachian Development
   P.O. Box 520
   Athens, Ohio 45701
   (614) 594-4206
   Contact: Robert E. Pitts

Attachment 4

Table 1

Household Energy Savings: NCAF Survey

| Locale | Percent | Methodology | 1981 Weatherized # Households | | ($ 1981) Cost Per Household |
|---|---|---|---|---|---|
| Penn | 25 | Vendor Bills Adjusted For Degree Day | 2,198 | | 848.55 |
| Brockton, MA | 28 | Vendor Bills | 239 | | 1,111.00 |
| Hyannis, MA | 29 | Vendor Bills Degree Day Adjusted | 298 | | 975.00 |
| Oregon | 27 | Vendor Bills Comparable Months | 695 | | 751.00 |
| Utah | 34 | N.A. | 542 | | 640.17 |
| Minn | 15 | Vendor Bills Degree Day Adjusted | 1,720 | | 1,350.00 |
| Missouri | - | N.A. | 783 | | 708.08 |
| Ohio | 25 | Ohio State Univ. | 2,049 | | 2,023.89 |
| Average | 26.6 | Total | 8,524 | Weighted Average | 1,209.94 |

Table 2

1981 Per Household
Cost Of Infiltration Measures

| Locale | Material | Labor | Program Support* | Total |
|---|---|---|---|---|
| Pennsylvania | $50 | $75 | — | $125 |
| Brockton, MA | 140 | 151 | 14 | 305 |
| Hyannis, MA | 68 | — | 90 | 158 |
| Oregon | 60 | 72 | 18 | 150 |
| Utah | 65 | — | 140 | 205 |
| Minnesota | 100 | 250 | 150 | 500 |
| Missouri | 61 | — | 48 | 109 |
| Ohio | 189 | 588 | 110 | 887 |
| Average | | | | 305 |

*In a number of cases in-house labor is listed under the program support category

Table 3

1981 Per Household
Cost Of Attic Insulation

| Locale | Material | Labor | Program Support | Total |
|---|---|---|---|---|
| Pennsylvania | $120 | $100 | — | $220 |
| Brockton, MA | 228 | 403 | $30 | 720 |
| Hyannis, MA | 200 | 200 | — | 400 |
| Oregon | 80 | 44 | 13 | 137 |
| Utah | 180 | 20 | 15 | 215 |
| Minnesota | 190 | 150 | 75 | 415 |
| Missouri | 74 | — | 58 | 131 |
| Ohio | 184 | 388 | 72 | 643 |
| Average | | | | 360 |

Table 4

1981 Per Household
Cost of Storm Windows

| Locale | Material | Labor | Program Support | Total |
|---|---|---|---|---|
| Pennsylvania | $ 25 | $ 6 | — | $ 31 |
| Brockton, MA | 300 | 90 | 78 | 468 |
| Hyannis, MA | 100 | 50 | — | 150 |
| Oregon | 294 | 107 | 25 | 426 |
| Utah | 225 | — | 100 | 325 |
| Minnesota | — | — | — | — |
| Missouri | 116 | — | 97 | 213 |
| Ohio | 147 | 114 | | 282 |
| Average | | | | 271 |

Table 5

1981 Per Household
Cost Of Furnace Tune-Ups

| Locale | Material | Labor | Program Support | Total |
|---|---|---|---|---|
| Pennsylvania | $200 | $75 | — | $275* |
| Brockton, MA | 10 | 40 | 20 | 70 |
| Hyannis, MA | — | — | — | — |
| Oregon | — | — | — | — |
| Utah | — | — | — | — |
| Minnesota | 75 | 35 | 20 | 130 |
| Missouri | — | — | — | — |
| Ohio | 65 | — | 9 | 74 |
| Average | | | | 137 |

*Includes partial retrofit

NATIONAL COMMUNITY ACTION FOUNDATION
2101 L STREET, N.W.
SUITE 906
WASHINGTON, D.C. 20037
(202) 775-0223

## CRITICAL REFORMS IN LOW INCOME WEATHERIZATION AMENDMENT

o Allowable maximum expenditure: Statewide average of $1600 per house. (Replaces $1000 per home limit with waivers up to $1600 per unit).

o Repair Costs: $150 limit repealed.

o Furnance efficiency modifications: Replacement burners, boilers, flue/venting devices, igniters, et al.

o Minimum amount spent on materials:

(1) Minimum 40% of state program expenditures spent on materials. (Replaces current rule which is 43% per unit).

o State may elect to make weatherization eligibility consistent with LIHEAP but not less than 125% poverty (current law).

o Units done in 1975-77 under lower ceilings.
Total expenditures on these units may be increased to $750 of materials at State option.

o New technology introduction - repeal Sec. 412(9)(g) "by rule". (To eliminate DOE rulemaking now required introduce new eligible measures to DOE list.)

Senator Weicker. Mr. Burgess, thank you very much for your testimony. We greatly appreciate it, and your very kind remarks.

Diana Ortiz.

## STATEMENT OF DIANA ORTIZ, ASSISTANT SECRETARY, MASSACHUSETTS EXECUTIVE OFFICE OF COMMUNITIES AND DEVELOPMENT, ON BEHALF OF THE COALITION OF NORTHEASTERN GOVERNORS, ACCOMPANIED BY JANICE SAMS-DeBARROS, DEPUTY ASSISTANT SECRETARY

Ms. Ortiz. Good morning, Mr. Chairman. My name is Diana Ortiz, and I am assistant secretary for neighborhoods for the Massachusetts executive office of communities and development.

I am here today on behalf of the Coalition of Northeastern Governors who have asked Massachusetts to appear before this committee.

Our agency administers the LIHEAP program and administers the weatherization assistance program.

In early December, CONEG adopted a policy resolution on the 1984 reauthorization of the low-income home energy assistance program. A key provision of that policy statement contains CONEG's opposition to any attempt to supplant Federal resources with oil overcharge funds. CONEG Chairman Governor O'Neill and CONEG Vice Chairman Governor Sununu have sent letters of opposition to both the House Energy and Commerce Committee and the Senate Energy and Natural Resources Committee.

CONEG believes strongly that all overcharge moneys are intended to be used as restitution for costs already borne by consumers, and that refunds in the manner intended under this bill would not constitute restitution but would in fact supplant Federal dollars for already existing programs.

This would in fact constitute a withdrawal of the Federal commitment to fund these programs. In Massachusetts, where the effects of major price increases in home heating fuel have been felt since early 1975, we have been particularly attentive to the energy needs of low-income households. The Commonwealth provides significant supplementary funds for both the low-income home energy and weatherization assistance programs. Our Federal allocation for these two programs exceeds $90 million, and we have supplemented these Federal funds with over $20 million in State funds.

In the energy assistance program we serve over 160,000 households annually by providing assistance for heating bills, and in the weatherization assistance program we are weatherizing for the first time over 12,000 homes annually. We have appreciated the congressional commitment to these vital programs over the past 7 years, and we are here today to register our strong concern that this commitment continue through the general revenue appropriation process.

The CONEG states are strongly opposed to the Petroleum Overcharge Restitution Act which proposes to authorize fiscal year 1985 appropriations for three energy programs—the Weatherization-Assistance Program, the Low-Income Home Energy Assistance, and the Schools and Hospitals Program—from funds recouped from the petroleum pricing violations. While we understand the need for

Congress to ensure that these funds are targeted to specific energy users and particularly to low-income users, we are concerned that the appropriation language in this act will supplant the former and ongoing Federal commitment to fund these three programs annually out of general revenues.

In order to ensure the protection of low-income consumers who are hardest hit by fuel price increases, an ongoing Federal commitment to fund conservation and energy assistance programs must be maintained. While I am here today to discuss primarily the authorization of energy programs from this fund, CONEG and Massachusetts are also concerned that the proposed authorization levels for each program are clearly too low to support the need that exists for these programs.

In addition to being concerned about the money not being used for restitution purposes and the fact that it would supplant the Federal commitment to these programs, we are concerned as well by the fact that the current funds held in escrow are clearly insufficient to support the funding levels of all three programs. While the act proposes to interchange oil overcharge general revenue funds to support appropriation figures, it is unclear whether or not the administrative process for transferring these moneys will provide timely and stable release of dollars needed to support program operations. In Massachusetts, for instance, the low-income home energy assistance program begins on October 1 at the outset of the heating season. Any delay in appropriation or transfer of needed funds for this program beyond the beginning of the fiscal year would have a serious detrimental impact on program operations.

We have worked diligently in Massachusetts to maintain a well-managed energy assistance approach to the problems of high energy costs. Over the years we have been able to work toward a well-defined and stable conservation program, a well-managed home energy assistance program, and we have used other available resources to fill in the gaps of both funding and regulatory restrictions imposed by the Federally authorized programs.

When the first round of oil-overcharge funds became available in the Commonwealth through the Warner funds, we were able to use these moneys in more innovative ways to meet needs that are not currently met with the Federal programs. We did not put any Warner funds into these three existing programs. For instance, with Warner funds we are implementing two pilot programs specifically targeted to low-income household needs that cannot be met under the existing weatherization-fuel-assistance program. Of the $6 million allocated to the Commonwealth out of the Warner funds, $2 million will be used to provide conservation to large multifamily low-income units that are not traditionally serviced in the Weatherization Assistance Program, and to replace oil burners for low-income households where funding and regulatory constraints prevent our doing so in the program.

In particular, in the multifamily pilot we are intending to leverage private funds to be used by landlords in the larger inner-city residential homes that have not really been the focus of the Weatherization Grant Program.

In addition, Massachusetts will use Warner funds to provide innovative financing for municipal and government conservation needs like those funds under the Schools and Hospitals Program. Warner funds will also be used in many States to supplement the type of repairs on dwelling units that are limited in the DOE Weatherization Program but that are needed to protect and enhance the weatherization work performed in that program.

Oil overcharge funds have also been used in many States to supplement the inadequate Federal appropriations for programs such as LIHEAP and the Weatherization Assistance Program and the schools and hospitals program. If we did not have such a substantial commitment of State funds for both weatherization and fuel assistance in Massachusetts, we would have also been forced to use the Warner funds to make up for inadequate appropriations for these two programs as well.

We thank the committee for this opportunity to give our comments.

[The prepared statement of Ms. Ortiz follows:]

PROVIDED BEFORE THE U.S. SENATE SUBCOMMITTEE ON ENERGY
CONSERVATION AND SUPPLY, SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

JUNE 14, 1984

Provided by Diana Ortiz, Assistant Secretary, Massachusetts Executive Office of Communities and Development, on behalf of the Coalition of Northeastern Governors

Good Morning Mr. Chairman. My name is Diana Ortiz, and I am Assistant Secretary for Neighborhoods within the Massachusetts Executive Office of Communities and Development. This morning I will be presenting testimony on behalf of the Coalition of Northeastern Governors, who requested that Massachusetts appear before this Committee. On behalf of the Coalition and the Governor of Massachusetts, I appreciate the opportunity to present our comments on the proposed "Petroleum Overcharge Restitution Act". The Massachusetts Executive Office of Communities and Development is responsible for operating federally and state funded programs for low income households, including the Low Income Home Energy Assistance Program funded by the Department of Heath and Human Services and the Low Income Home Weatherization Assistance Program funded by the Department of Energy. Our Division also administers the Community Services Block Grant and the supplementary state funded programs for fuel assistances and weatherization.

In early December, CONEG adopted a policy resolution on the 1984 reauthorization of the Low Income Home Energy Assistance program. A key provision of that policy statement contains CONEG's opposition to any attempt to supplant federal resources with oil overcharge funds. CONEG Chairman Governor O'Neill and CONEG Vice-Chairman Governor Sununu have sent letters of opposition to both the

House Energy & Commerce Committee and the Senate Energy and Natural Resources Committee. CONEG believes strongly that all overcharge monies are intended to be used as restitution for costs already borne by consumers, and that there is legal precedent for this intent. As such, oil overcharge funds should be used to make restitution to consumers, and not to supplant federal dollars for already existing programs. These monies are not U.S. Treasury dollars; they are simply being held by the federal government until release for the purpose of restitution.

In Massachusetts, where the effects of major price increases in home heating fuel have been felt since early 1975, we have been particularly attentive to the energy needs of low income households. The Commonwealth provides significant supplementary funds for both the Low Income Home Energy and Weatherization Assistance Programs. Our federal allocation for these two programs exceeds $90 million, and we have supplemented these federal funds with over $20 million in state funds. In the Energy Assistance Program, we serve over 160,000 households annually by providing assistance for heating bills, and in the Weatherization Assistance Program we are weatherizing for the first time over 12,000 homes annually. We have appreciated the Congressional commitment to these vital programs over the past seven years, and we are here today to register our strong concern that this commitment continue through the general revenue appropriation process.

The CONEG states are strongly opposed to the "Petroleum Overcharge Restitution Act", which proposes to authorize FY 85 appropriations for three energy programs -- Low Income Weatherization Assistance, Low Income Home Energy Assistance, and the Schools and Hospitals Programs -- from funds recouped from petroleum pricing violations. While we understand the need for Congress to ensure that these funds are targetted to specific energy users, and particularly to low income users, we are concerned that the appropriation language in this Act will supplant the former and ongoing federal commitment to fund these three programs annually out of general revenues. In order to ensure the protection of low income consumers who are hardest hit by fuel price increases, an on-going federal commitment to fund conservation and energy assistance programs must be maintained. While I am here today to discuss primarily the authorization of energy programs from this fund, CONEG and Massachusetts are also concerned that the proposed appropriations levels for each program are clearly too low to support the need that exists for these programs.

I would like to address three major concerns regarding the "Petroleum Overcharge Restitution Act": 1) the supplanting of federal funds with these monies; 2) the need for oil overcharge monies to be refunded as restitution to all consumers who may have paid artificially high prices for petroleum and petroleum products; and 3) the timing and amounts of appropriations for the three programs mentioned in the Act.

First, I am concerned that this Act authorizes three federal programs to be funded from oil overcharge monies. We believe strongly that these funds are being recouped for price violations that have already occurred, and that the funds are to be used for restitution purposes for those households who have already experienced the price increases caused by these violations. To authorize the use of these funds to "replace" the ongoing federal commitment to annual programs designed to assist households to meet rising energy costs jeopardizes the federal intent to provide targetted assistance to low income households who need the benefits of federal dollars. Such a supplanting of federal commitment can only undermine the continued integrity of the energy programs that we have worked so hard to maintain and that have been so effective in meeting household energy costs.

Second, these oil overcharge funds are to be used for restitution purposes. Consumers in Massachusetts and the region have already paid the price of high energy costs and should be able to receive restitution for making other sacrifices to pay those costs. Low-income households were particulary hard hit by these pricing violations. They should not be compromised in the future for having borne these high energy costs by having the oil overcharge funds used to supplant federal dollars appropriated from general revenues to support ongoing assistance programs.

Finally, I am concerned that recent indications of amounts of oil overcharge funds currently held in escrow show insufficient dollars available to support the funding levels of all three programs. While the Act proposes to interchange oil overcharge and general revenue funds to support appropriation figures, it is unclear whether or not the administrative process for transferring these monies will provide a timely and stable release of dollars needed to support program operations. In Massachusetts, for instance, the Low-Income Home Energy Assistance Program begins on October 1 at the onset of the heating season. Any delay in appropriation or transfer of needed funds for this program beyond the beginning of the Fiscal Year would have a serious detrimental impact on program operations.

We have worked diligently in Massachusetts to maintain a well-managed energy assistance approach to the problems of high energy costs. Over the years, we have been able to work towards a well-defined and stable conservation program, a well-managed home energy assistance program, and we have used other available resources to fill in the "gaps" of both funding and regulatory restrictions imposed by the federally authorized programs. When the first round of oil overcharge funds became available to the Commonwealth through the Warner funds, we were able to use those monies in more innovative ways to meet needs that are not currently met with the federal programs. For example, with Warner funds, we are implemeting two pilot programs specifically targeted to low-income household needs that cannot be met under the existing weatherization and fuel assistance programs. Of the $6 million in Warner funds allocated to the Commonwealth, $2 million will be used to provide conservation to large multi-family low income units that are not traditionally serviced in the Department of Energy Weatherization Assistance Program, and to replace oil burners for low income households where funding and/or regulatory constraints prevent our doing so in the existing program. Additionally, Massachusetts will use Warner funds to provide innovative financing for municipal and government conservation needs like those funded under the Schools and Hospital Program. Warner funds are also used in many states to supplement the type of repairs on dwelling units that are limited in the DOE program, but that are needed to protect and enhance the weatherization work performed in that program.

Oil overcharge funds have also been used in many states to supplement inadequate federal appropriations for programs such as the Low Income Home Energy Assistance Program, Weatherization Assistance Program, and the Schools and Hospital Program. If we did not have such a substantial commitment of state funds for both the Weatherization and Fuel Assistance Programs in Massachusetts, we would also have been forced to use the Warner funds to make up for inadequate appropriations for those two programs as well.

CONEG and Massachusetts appreciate the opportunity to provide these remarks, and I will be happy to answer any questions the Committee may have.

# CONEG

## COALITION OF NORTHEASTERN GOVERNORS

OVERNOR THOMAS H. KEAN, Chairman
OVERNOR WILLIAM A. O'NEILL, Vice-Chairman

DAVID D. ARNOLD
Executive Director

### CONEG POLICY RESOLUTION

### ON

### LOW-INCOME ENERGY ASSISTANCE

The Coalition of Northeastern Governors believes that it is essential that Congress reauthorize the Low-Income Energy Assistance Program (LIEAP) early in the 1984 session. This program has been successful in aiding low-income households to cope with high energy costs. In 1983, it is estimated that more than 2 million northeastern households benefitted from this vitally important program. CONEG believes that a reauthorized Low-Income Energy Assistance Program should include the following principles and considerations:

-- CONEG believes that LIEAP is primarily a heating assistance program. The sustained high level of home heating costs over the past several years has caused severe economic strain on, and threatens the health and safety of, low-income households in the Northeast. It is important, therefore, that the LIEAP distribution formula consider the following factors:

  - total current low-income household heating expenditures;

  - heating degree days squared; and

  - number of low-income households, as measured by the number of households with incomes equal to or below 60 percent of a State's median income.

-- The anticipated need and demand for low-income energy assistance is not expected to abate in the next few years. In fact, the need for LIEAP funds could be exacerbated by increases in energy prices and slow economic growth. Authorization for this program should therefore provide funding at least equal to the current program level.

-- Year-to-year changes in the appropriations level and other aspects of the program complicate State administration of the program and can have detrimental impacts on the program quality and number of households served. CONEG believes that this uncertainty can be reduced by enacting a multi-year authorization.

-- The state flexibility provisions of the Omnibus Reconciliation Act of 1981 (e.g. transfer and carry-over) have helped assure the efficient and effective use of these funds to meet low-income energy needs. These provisions should be retained.

-- The oil overcharge refunds being collected by the Department of Energy from U.S. oil companies found to be in violation of the 1973-1980 oil price controls are restitutions to consumers injured by these violations. These refunds should not be used to substitute for or supplant any federally-funded program.

Adopt December 5, 1983

CONEG
COALITION OF NORTHEASTERN GOVERNORS

**GOVERNOR THOMAS H. KEAN, Chairman**
**GOVERNOR WILLIAM A. O'NEILL, Vice-Chairman**

**DAVID D. ARNOLD**
**Executive Director**

# CONEG POLICY STATEMENT

# ON

# LOW-INCOME ENERGY ASSISTANCE

The Coalition of Northeastern Governors believes that it is essential that Congress continue the Low-Income Energy Assistance Program (LIEAP) beyond its scheduled expiration at the end of the current fiscal year. This program has been proven successful in aiding low-income households in the Northeast to cope with the combined effects of severe winter weather and high energy costs.

The need and demand for low-income energy assistance has been exacerbated by the sharp increase in heating oil prices this winter. Increases of up to 25 percent in heating oil prices have placed severe hardships on low-income and elderly residents in the Northeast, and have strained the ability of states to meet the fuel assistance needs of their citizens. Authorization and appropriation levels should therefore be at least equal to the current program level.

Recent statistics compiled by the Department of Health and Human Services and the Energy Information Administration confirm the fact that low-income households in the Northeast suffer the highest overall heating costs in the nation. It is important, therefore, that the LIEAP distribution formula recognize and account for the continued burden of high energy costs on the Northeast's low-income households, and not be changed to shift money to sections of the country with less severe winter weather.

The President's FY 1985 budget indicates that the Administration will seek legislation to establish a "Petroleum Overcharge Restitution Fund" as a means of distributing future and currently held funds resulting from the settlement of 1973-1980 oil price control violations. Under this legislation, the oil overcharge refunds will substitute for regular appropriations to the Low-Income Energy Assistance Program, the Low-Income Weatherization Program, and the Schools and Hospitals Program. CONEG believes that the use of these refunds in this manner does not provide restitution to the parties injured by the oil pricing violations. Therefore, the Coalition of Northeastern Governors reiterates its strong opposition to any efforts to use these refunds to substitute or supplant any federally-funded program.

Adopted February 26, 1984

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CONEG
COALITION OF NORTHEASTERN GOVERNORS

OVERNOR WILLIAM A. O'NEILL, Chairman
OVERNOR JOHN H. SUNUNU, Vice-Chairman

March 12, 1984

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing on behalf of the Coalition of Northeastern Governors to express our strong opposition to the "Petroleum Overcharge Restitution Fund" legislation recently introduced by request of the Administration.

This legislation (H.R. 4972, S.2370) would distribute future and currently held funds generated from the settlement of 1973-1980 oil price control violations in substitution for regular appropriations to the Low-Income Energy Assistance Program, the Low-Income Weatherization Program, and the Schools and Hospitals Program. CONEG believes that the use of these refunds in this manner does not provide restitution to those parties injured by the oil pricing violations. In addition, the uncertain levels of funding provided under this proposal will have a detrimental impact on the quality and effectiveness of the services delivered by the affected programs. CONEG believes this legislation provides an improper and unwise use of these refunds and should be rejected by the Energy and Commerce Committee.

We urge your support in opposing the petroleum overcharge legislation. We also seek your commitment to maintaining the Weatherization and Schools and Hospitals Programs and to reauthorizing the Low-Income Energy Assistance Program. These programs have been proven successful in aiding low-income households in the Northeast to cope with the burden of high energy costs.

Sincerely,

Will A O'N
Governor William A. O'Neill
CONEG Chairman

John H Sununu
Governor John H. Sununu
CONEG Vice Chairman

Mr. Hill.

## STATEMENT OF CHARLES E. HILL, NATIONAL CONSUMER LAW CENTER, ACCOMPANIED BY DOUGLAS PARKER, DIRECTOR, INSTITUTE FOR PUBLIC REPRESENTATION

Senator Weicker. Thank you very much.

Mr. Hill. Thank you, Mr. Chairman. I am the managing attorney of the National Consumer Law Center's Washington office.

The center is a nonprofit organization which deals with consumer and energy problems of poor people and has long had an active interest in the operation of the Weatherization Program and other Federal programs to help poor people meet their rising energy business.

We are very grateful, therefore, for the opportunity to appear here today, and I am accompanied by Douglas Parker who is the director of the Institute for Public Representation which did the lion's share of the work on the legal memorandum that is attached to my testimony and which analyzes the administration's oil overcharge legislation. We want to spend the bulk of our time on that legislation, but there are a few preliminary remarks I want to make. Otherwise I will leave the treatment of the Weatherization Program to my written testimony.

One fundamental point to remember is that the energy crisis is not over for the poor. The rest of us may have adjusted, often with difficulty, to the skyrocketing prices over the last decade, but the poor surely have not. The study recently released by the center indicates that in 21 States, low-income households have spent an average of over $1,000 a year on household energy. That study takes a close look at single personnel, those dependent on SSI and unemployment compensation as their basic source of income, but the findings are illustrative for the poor as a whole.

Clearly energy has ballooned into a major item in low-income housing budgets, squeezing out other items and putting people in very dire straits. We have a $2 billion Energy Assistance Program. It is designed in some measure to deal with that, but that program only reaches about 35 percent of the national eligible population and provides an average benefit of something in the neighborhood of $200. Therefore, you can see the limited impact of the Energy Assistance Program in dealing with this critical situation.

One of the reasons that that program cannot really handle the situation is that in some measure it misses the point. The poor are in the energy plight that they are in in part because of the weatherization conditions of the home in which they live. Therefore, the energy that is in some measure purchased by the Energy Assistance Program is an insignificant measure being wasted to the outdoors through the roofs and walls of those low-income dwellings. It is critical, therefore, in dealing with this problem to provide a reformed and expanded Weatherization Program.

It is something that we have dealt with at length through work funded by the Ford Foundation. Again, I leave to my written testimony the treatment of the Weatherization Program and the reforms that are needed.

DOE has made a good step in the right direction through the administrative process. There are other things that they did not address, and they are things that can only be addressed through statutory reform.

The other critical thing is a major commitment of assured funding for weatherization substantial enough to do the job. One of the DOE witnesses mentioned the fact that there is still something in the neighborhood of 13 million low-income households that need weatherization. After 8 years of a weatherization effort in this country, we have weatherized approximately 1.2 million out of something in excess of 14 million households. That is a rather staggering statistic. It seems to me it speaks very eloquently for an expanded major commitment in this area.

It would be nice if the administration would back such a commitment. It would be nice if the administration would back major reforms to the Weatherization Program. It has not done so. Rather it has repeatedly tried to kill the Weatherization Program. It has now found an alternative approach. Having failed in that effort, they have said OK, we will commit ourselves to the Weatherization Program on two conditions—first, that it stay modest in size, basically the size it has been over the last 4 years, and second, that it be funded out of money which is not Government money, which is money that has been accumulated through the oil overcharge prosecution and settlement process.

That money is money that largely belongs to consumers. It should be used to make up for the injury that consumers experienced from 1973 to 1981. It is not money that is available appropriated funds for the Federal Government and should not be used to back out Federal dollars in these programs. Mr. Parker will cover the legal analysis in our memorandum, but I want to say a couple of things about the legislation.

First of all, one of the DOE witnesses again talked about their proposed legislation providing orderly approach to this problem, the distribution of these oil overcharge moneys. In fact there is an orderly approach which is emerging within the Department of Energy, and that is a subpart B proceedings and procedures provided by the Office of Hearings and Appeals.

One critical thing that the Office of Hearings and Appeals has done is to recognize as Congress did 2 years ago in passing the Warner amendment that these funds must be used to supplement existing Federal dollars and not supplant those dollars. That is one of the cardinal principles that the Office of Hearings and Appeals has established in the second stage of its subpart B proceedings.

It has also taken steps to assure that the money is spent in energy-related money, and that there are only small administrative costs attached to it. It is certainly a process which ought to be watched. There is a lot of money involved. It is a significant issue as to how those funds should be spent by the States, but we would submit that the process should be watched but not altered. It should be given an opportunity to run its course and to create a track record that Congress can then in fact judge.

The administration witness talked to some extent about the commitment that would be involved in the petroleum overcharge restitution fund legislation. That legislation is a piece of authorization.

It is not an appropriation. It is not a sound, binding commitment on the administration and certainly doesn't bind Congress. Congress has repeatedly funded the Weatherization Program and the Energy Assistance Program at levels above what the administration wanted. It has repeatedly turned back requests by the administration to kill the Weatherization Program. Congress has established a pretty consistent level of funding for this program—inadequate but consistent—and I would submit that those commitments coming from Congress and that congressional action provides at least as much security on the funding front as the administration bill.

One final point that I must express again, and that is that the administration witnesses try to tie their effort to the Warner amendment because in fact a couple of the programs that would be funded under the administration bill are programs that could be utilized by the States to expend Warner funds, but again, a major distinction as I understand one of the cardinal principles of the Warner amendment is the idea that funds will be used to supplement and not to supplant Federal dollars, State dollars committed to lowincome and other energy programs.

Thank you.

Senator WARNER [presiding]. Thank you, Mr. Hill. The chairman and I are going to alternate here. He has to go to the floor. I will go to the floor a little later. I want to involve myself in this hearing.

Mr. PARKER. I would like to take just a moment to discuss a couple of legal questions that are covered in our memo, and I think it may be necessary at this point to clarify some of these in light of some of the statements that were made by the administration witness.

Senator Weicker raised a question as to whether this procedure was actually truly restitution. I think the question of whether it is restitution doesn't arise out of the issue of whether or not the particular distribution mechanism itself results in restitution.

Rather this process is not restitutionary because as everyone else has mentioned, it supplants and does not supplement existing funding. As you know, the whole oil overcharge procedure has developed as a way of remedying past injury, and what the administration is proposing to do here is rather than use these funds to actually remedy past injury, they are using the funds to fund the future Government obligations. That is, they are using it for programs which the Government has funded for several years.

As our paper explains, legally this is in essence the equivalent of someone depositing the money in the Treasury. It basically is inconsistent with the whole idea of restitution which is the core of the economic stabilization because it does not have the effect of returning money to remedy past injuries but simply puts the money into the Treasury for future Government fiscal purposes.

That, I think, is a very fundamental point that everyone here has mentioned, and I think it is a very significant legal point.

The other question that was raised initially, Senator Warner, before you came in, is the constitutional issue here. The Government, the administration responded to that by addressing it primarily in due process terms of whether or not it was consistent with the constitutional notions of due process to change the way the money would be distributed while the litigation is going on.

I must say that is an issue I hadn't really thought about that raises some interesting questions, too, but I think the more fundamental question which is discussed in our paper is a very fundamental question of separation of powers, and that is the question of whether one arm of the Government, Congress and the Executive, can step in an ongoing litigation, specifically the *Exxon* case and the stripper case, step in and change the results in that litigation while it is still going on, keeping in mind that the Government is a party to that litigation and that this litigation would change the results of *Exxon's* case in the Government's favor.

In the district court in the *Exxon* case the Government took the position that all these funds should go directly into the Treasury. They lost on that point. They declined to appeal on that point, and then in the temporary emergency court of appeals they have not challenged that question.

However, what they have done is proposed legislation which would essentially have the same effect. That I think raises serious constitutional questions as to whether one arm of the Government can step into a judicial process and change the results in this fashion. It is, of course, especially offensive because they are changing those results in their own favor, and the case law which illustrates that and which discusses that question is laid out in full in our memo.

In summary, I think the point about the legal issues here is that there are some very solid technical objections to this legislation, but underlying that are some fundamental notions of fairness, and I hope that the committee will evaluate this not just on the technical, legal questions, but also look at the legal issues as ones which raise fundamental as well as moral questions about whether the money should be handled in this fashion.

Thank you.

[The prepared statement of Mr. Hill follows:]

# TESTIMONY OF CHARLES E. HILL
OF THE
NATIONAL CONSUMER LAW CENTER

BEFORE THE
ENERGY CONSERVATION AND SUPPLY
SUBCOMMITTEE OF THE
SENATE ENERGY COMMITTEE

June 14, 1984

My name is Charles Hill and I am the Managing Attorney of the National Consumer Law Center's Washington office. The Center is a non-profit organization which deals with energy and consumer problems of poor people. Because of the low-income weatherization program's great importance to the low-income clients whom the Center represents, and because of the potential value of supplemental assistance from oil overcharge funds in aiding the poor to meet their energy needs, I welcome this opportunity to testify before the Subcommittee on Energy Conservation and Supply in order to address these issues. I appear here today both at the invitation of the Subcommittee and on behalf of the Center's clients. My testimony will cover the following areas:

1) a discussion of the Center's work and findings on low-income weatherization issues, much of which has been sponsored by a grant from the Ford Foundation;
2) comments regarding the need for an expanded and somewhat revised weatherization program, to meet the very substantial need for conservation assistance; and
3) the reasons for the Center's opposition to the Administration's proposal to establish a "Petroleum Overcharge Restitution Fund" for the purpose of receiving all oil overcharge funds and distributing them through three federal programs, in place of the appropriated monies which Congress has used to finance these efforts in the past.

## I. THE ENERGY PLIGHT OF THE POOR

The Committee hardly needs a detailed analysis of the energy plight of the poor. Let me, however, briefly sketch the situation, in order to put our concerns in perspective. In the last ten years the cost of home energy has soared, increasing much more rapidly than inflation. The retail price of heating oil has increased by a factor of roughly six since 1973, and natural gas prices have more than quadrupled during the same period. By contrast, the CPI increased by roughly 125% during this period. The poor are, of course, hit hardest by these increases, as energy claims an increasingly large portion of the low-income household budget.

Although the poor consume less household energy than the "average" American household, they spend roughly four times the percentage of their income on energy as does the average American household. A recently released Center study on energy costs facing the poor indicates that in 21 states the average low income household spent over $1000 on household energy during the last year. (A summary of the findings of the report is attached as an exhibit.) In fact, for many poor households in northern states, monthly winter heating bills exceed monthly income.

The condition of their housing stock is at the heart of the dilemma facing the poor. Not only does low income housing lack basic weatherization, but much of it is also old and difficult to retrofit. In many cases these homes need substantial repair work, or extensive rehabilitation to support even minimal energy conservation improvements. Yet, low income households, either unable to pay, or barely having the funds to pay their fuel bills, clearly lack the funds to weatherize their homes, no matter how cost-effective it may be. Moreover, a significant number of the poor, probably approaching half, are renters and thus have a limited incentive to make capital improvements to help conserve energy.

And while the HHS energy assistance program (LIHEAP) helps, the level of assistance is modest, and is provided at a recurring annual cost to the U.S. taxpayer. This roughly $2 billion program is still reaching only about 35% of the nationally eligible households, and provided an average benefit of only slightly in excess of $200 last year. With average low-income home energy bills over $1000 in almost half the states this year, LIHEAP is hardly providing a solution to the problem. To illustrate, low-income New Yorkers spent an average of roughly $1400 on home energy this past year. Yet the average LIHEAP benefit will be only about $200. Rising energy costs and the gap between them and available household resources is further illustrated by the increasing number of households in arrears on their utility bills, the growing average size of arrearages, and the growing number of households either terminated or at risk of utility shut-off. It is clear, then, that some more permanent aid, in the form of assistance to reduce consumption through conservation, is desperately needed.

## II. PETROLEUM OVERCHARGE RESTITUTION FUND

I discuss below the central role that an expanded and somewhat revised federal government weatherization program must play in that conservation effort. This hearing also presents a valuable opportunity to address the manner in which the Administration hopes to fund the weatherization program in future years -- if fund it, it must. I discuss this issue first not because the questions of weatherization program design and implementation are not of paramount importance. Rather, I do so because the Administration's proposal is both new and, I believe, dangerous, and this hearing is the first Congressional airing of the subject. It is important, therefore, to give it a thorough airing at the outset, and having disposed of it, to then turn to the more fundamental question of whether the Senate should join the House to revise the weatherization program and give it substantial, long-term funding so that it can tackle the task before it.

In its FY 1985 budget, the Administration proposed the establishment of a "Petroleum Overcharge Restitution Fund" (PORF), into which the Department of Energy would place all overcharge settlement funds, and also all overcharge funds obtained through DOE litigation, which are not claimed by purchasers who can show that they bore the overcharge in question. From the PORF, which the budget estimated could contain $2 billion by FY 1985, the Administration projected covering most of the requested FY 1985 funding for the Low-Income Weatherization Program, as well as for the

Low-Income Home Energy Assistance Program and the Schools and Hospitals Conservation Program. The Administration subsequently prepared legislation to implement this concept and bills have now been introduced in both Houses, S.2370 constituting the proposal in the Senate.

The National Consumer Law Center, on behalf of its low-income clients, strongly urges Congressional rejection of this proposal, for reasons summarized below. Those reasons are elaborated upon in an attached memorandum, prepared by the Center and Georgetown University Law Center's Institute for Public Representation. That memorandum provides a detailed analysis of PORF from a legal and policy standpoint. I will simply summarize the main points here.

## The Administration's Proposal

It is important to understand how the Administration's proposal would operate, and how it relates to current weatherization program funding. Stated most simply, the PORF would use oil overcharge monies to fund the weatherization program and these other programs at essentially their current funding level, while saving the Treasury from continuing support from tax dollars for these measures, except to the extent that the oil overcharge funds fall short of those current funding levels. This proposal can be seen essentially as a clever way to deposit oil overcharge funds directly into the Treasury or as a funding of low-income energy programs out of past consumer damages. In any event, it offers no additional funding to low-income consumers and no aid at all to other consumers who bore the underlying overcharges. These facts alone argue eloquently against the proposal.

## The Applicable Legal Framework

The oil overcharge funds are obtained by the federal government in its enforcement role under Section 209 of the Economic Stabilization Act (see 12 U.S.C. Section 1904, Note). At the core of remedial action under Section 209 is the concept of "restitution", a concept also further reflected in DOE regulations. It is the gist of restitution that ill-gotten gains be disgorged by the offending party and that those gains be returned to the rightful owner, to make up for the past injury. Citronelle-Mobile Gathering, Inc., et al. v. Edwards, 669 F.2d 717, 722 (TECA, 1982), cert. denied, 444 U.S. 879 (1982). The Temporary Emergency Court of Appeals held in the Citronelle case that deposit of oil overcharge funds in the U.S. Treasury is not restitution.

Measured against these standards, the Administration's bill does not effect restitution. Oil overcharge funds are collected to remedy past injuries and they should be applied in such a way as to address those past injuries, not simply to back out current funds which would be appropriated by Congress for the on-going needs of federal programs. In passing the Warner Amendment over a year ago, and thus distributing $200 million dollars in oil overcharge funds for use by the states in various energy programs, Congress was careful to recognize this restitutionary principle, assuring that the funds had their impact above and beyond current appropriations. It did so by requiring that those funds be used to "supplement, and not supplant, funds otherwise available for such programs under Federal or State law." Section 155 (c), Pub. L. 97-377.

### The Government's Obligations as Trustee

Approached from another angle, these are not federal funds or general revenues under the appropriation power of Congress. They were developed by the Federal Government in its law enforcement capacity and it holds them as a trustee for the injured class or classes of purchasers. Citronelle-Mobile Gathering, Inc. et al. v. Edwards, supra, 669 F2d at 723. Appropriating the funds for its own governmental purposes would be a violation of the Federal Government's trustee responsibilities to the injured purchasers.

### Separation of Powers Issue

With respect to certain major DOE litigations, e.g., U.S. v. Exxon, TECA No. 91-100 (Temporary Emergency Court of Appeals), there is a substantial constitutional question as to whether Congress can reach into an on-going litigation, especially where there is a final district court order, and restrict the remedies which the court has available to it to resolve the dispute and correct the damage done. This is particularly so when the funds at issue are not Federal Government monies, but are private funds collected by the Government in its law enforcement/trustee role. This constitutional concern gains added weight from the fact that the Administration specifically declined to appeal the district court-ordered remedy in the Exxon case. It initially filed an appeal and then withdrew it. Its position in the Exxon case on appeal is that the district court was acting properly, within its discretion, in adopting a particular distribution mechanism for the Exxon oil overcharge monies. Having ultimately declined to appeal the district court order, the Administration is now seeking to "appeal" that decision through Congress.

### The Status of Oil Overcharge Funds

There is nothing even approaching $2 billion in oil overcharge funds currently in the Government's hands, nor will there be such a sum until well into FY 1985, at the very earliest.

a. There may be a bit more than $400 million in overcharge funds currently at the Department of Energy, but much of that money is the subject of on-going Office of Hearings and Appeals administrative proceedings, designed to identify injured parties or otherwise make distributions of residual funds. At best, only a portion of these monies would remain unclaimed. In addition, new settlements have almost ground to a halt.

b. While the Exxon case may have a face value above $1.6 billion, it is currently the subject of an appeal to the Temporary Emergency Court of Appeals by Exxon and various oil companies, and oral argument was just held before TECA on May 23. Even if the district court order is left undisturbed, it seems likely that these funds could not be distributed to the states until well into FY 1985. Moreover, it is quite conceivable that TECA, or the Supreme Court, could find either that Exxon did not violate the law or that the remedy adopting the Warner Amendment approach to distribution of funds, should be set aside because various claimants may be entitled to some of the funds.

c. The only other major potential source of funds, the Stripper Well litigation (MDL-398, before the U.S. District Court for Kansas), could not conceivably produce funds before mid-FY 1985, or probably FY 1986. Moreover, the district court has made it clear that it will maintain control of the funds and determine their ultimate disposition. (In that process, it is seeking the advice of the Office of Hearings and Appeals.)

In summary, then, use of the oil overcharge funds as the Administration proposes holds no added benefit to consumers; it in no way makes up for past injury; consumers simply receive what Congress would otherwise appropriate from general revenues. Moreover, the proposal is inconsistent with the principles under which the funds were collected, runs counter to the government's fiduciary responsibilities, and raises serious constitutional questions.

While the Administration proposes to use these funds as a way to back out appropriated dollars, the states have by and large taken responsible steps to return the benefits of the oil overcharge settlement funds to their citizens, who bore the impact of the overcharges in the first place. In at least one instance - that of the Warner Amendment - state distribution was done at Congress' behest. And, most importantly, in each instance, the funds were spent in a way which supplemented, rather than replaced, existing federal, state and local monies. The Center has closely monitored this process, beginning with the distribution of Chevron settlement funds in 1981, through the Warner Amendment distribution, to the present Office of Hearings and Appeals procedures. These latter procedures, as currently articulated, are ensuring that the states spend these funds essentially in a supplemental fashion, on energy-related projects, generally with a minimum in administrative costs.

The Office of Hearings and Appeals claims procedure and its process of determining what to do with unclaimed funds seem to be operating relatively smoothly. OHA is establishing a pattern and what seems to be a reasonable set of procedures for administrative decision-making, and is gaining relevant expertise in the process. I see no particular value in interfering with that process at this point, just when it is "coming of age". At the same time, certain of OHA's actions in distributing these funds indicate the need for careful oversight and continued monitoring. Too much money is at stake, and the need to remedy past injury (which can be measured in the billions) is too great for Congress to ignore the DOE process.

We, therefore, strongly urge careful oversight of OHA's activities. This is particularly so because of the critical decisions OHA will be making within the next year regarding such issues as the distribution of settlement funds attributable to crude oil pricing violations, the questions posed to OHA by the U.S. Distict Court in Kansas regarding the distribution of the Stripper Well litigation fund of over $1 billion and the ongoing distribution of Amoco settlement funds. Should it appear, after a year, that these decisions are being made in an irresponsible manner, inconsistent with the principles underlying restitution, or without regard to reasonable procedures, then it would, in our view, be appropriate for Congress to step in and give serious thought to legislation in this area.

These points are all spelled out in greater detail in the attached memorandum.

## III. THE LOW INCOME WEATHERIZATION EFFORT

### The Center's Ford Foundation Project

Because of the expected continued shortfall of energy assistance funding and the consequent importance of weatherization assistance to our clients, the Center has long had an interest in the operations of the DOE low-income weatherization program. Hence, over the years, we have monitored the program's progress, worked for legislative reform and consistently provided DOE with suggestions on how the program could be improved administratively. The intensity of our monitoring and analysis, however, increased considerably when, in 1981, we received a grant from the Ford Foundation to support Center work in the area of low-income conservation programs. In addition to general writing and advocacy in the conservation field, the Ford grant has supported substantial research and analysis, which is currently being reduced to a two-volume report. The first volume will be devoted to a review of current programs aiding, or with the potential to aid, low income households weatherize their homes; the second volume will pose and analyze various program options applicable to the low-income conservation effort. We will be happy to provide the Subcommittee the results of our efforts, upon completion. Let me, however, review briefly our work under the grant and the nature of our findings, to date.

From mid-1981 to early 1983, the Center investigated a wide variety of government and private energy conservation programs available to low-income families. Our efforts entailed, among other things, a survey of weatherization program operators, community groups and advocates on the adequacy of the federal government weatherization effort, extensive interviews with government officials, an in-depth study of one, largely urban program, and extensive research into government and private conservation efforts.

Although there are numerous programs throughout the country to promote energy conservation, most are designed to benefit middle and upper income consumers. Of those that focus on assisting low-income consumers, only the Department of Energy's low-income weatherization program -- now supplemented by funds taken from the Low Income Home Energy Assistance Program, and generally expended through the DOE program's format -- has the potential to make a significant impact on the energy crisis facing the poor.

## Other Federal Conservation Programs

In our survey, we took a look at a wide variety of federal conservation programs, or programs with conservation potential, run by different agencies. None of them provided a real substitute for the DOE weatherization effort, although a number have real potential for conservation on their own, or as a supplement to the DOE program. For example, the Community Development Block Grant program, touted as a possible alternative to low income weatherization early in this Administration's term, has too little funding for its traditional areas of operation and, in any event, competition for the reduced level of funding from other worthy local efforts, many already getting that funding, would be hard to beat. In short, CDBG cannot be looked to as a major source of weatherization aid but its funds can provide a valuable supplement to the DOE effort in some local areas. Similar limitations apply with respect to programs operated by the Farmers Home Administration to aid in the rehabilitation and construction of residential dwellings in rural areas. In addition, most of these funds are loan monies, carrying with them another restriction on participation by the poor. The remaining federal programs, such as the Energy Extension Service and the State Energy Conservation Program, are modestly funded and, to date, have been of limited value to the poor.

## State-Funded Low Income Conservation Programs

Under the Ford grant, we also looked at state efforts. We found that while a number of states had conservation assistance programs, most were designed in a way that effectively excludes low-income participation. Of those state programs that were specifically earmarked for the poor, most of these were supplements to the DOE program, used to circumvent rigid DOE program regulations. Further, with recent state revenue shortages, most of these programs have been discontinued.

## Utility-Financed Conservation Programs

We also looked extensively at utility-financed conservation efforts. Our survey of state utility commissions indicated that many are establishing or considering programs where utilities offer inexpensive conservation financing to their customers. This concept, which has received widespread attention in recent years, may not adequately serve low-income consumers. Although there are now some notable exceptions, most of the more substantial utility conservation programs currently in operation have designs that effectively limit low-income participation, in large measure because they operate through a loan interest subsidy only. Credit tests, exclusion of rental units and insufficient low-income outreach are limitations on the usefulness of many of these programs, as well. Of late, through certain utilities, generally at Public Service Commission direction, there have been some more successful attempts to reach out to the poor. These programs offer promise, but they are only a relatively narrow base, with limited geographic coverage at this point.

## The DOE Program

Because of the shortcomings in these other resources, the Center has focused its primary attention under the Ford grant on the DOE's weatherization assistance program, the most substantial federal effort to provide energy conservation directly to the poor. Since it began operations in 1976, the program has provided insulation, and other weatherization measures to over 1.2 million households, resulting in estimated fuel savings ranging from 13.8% to 33% for these households.

In its early years, the program fell far short of its full potential. This underachievement can be traced, we believe, to the inflexibility in the program's statute and administration, and to some extent to the differing philosophical roots of the authorizing legislation. Weatherization was conceived with several different, and at points conflicting, policy objectives (energy conservation, poverty assistance, housing rehabilitation, and employment and training), with the resulting confusion often detracting from overall effectiveness. And, while conceived in significant measure as a block grant, the program's statute placed substantial restrictions on state and local initiative, thus frustrating that initiative. DOE's regulations and practices in the early years simply accentuated the problem.

In our Ford work, we have traced the history of the program, from its roots after the Arab oil embargo. Authorized by the Energy Conservation and Production Act (ECPA), the DOE weatherization program's funding increased from $27.5 million in 1977 to $199 million annually in 1979 and 1980. Funds were decreased in 1981 to $175 million and to $144 million in 1982, with an increase to $245 million in 1983, and a drop to $190 million this year. During this latter period, the program has been under constant attack by the Reagan Administration, which has sought to bring it to an end. Not surprisingly, our Ford inquiry indicated that this volatile funding level, and the recent efforts to terminate the program, created very real problems. Staffing at all levels suffered, as did a critical sense of continuity and morale, as the government has radically changed funding levels and support for the program. More importantly, the funding level seems totally divorced from need, both in terms of households unweatherized and in terms of the size of energy bills received by uncovered households. It is also divorced from considerations of program capacity. In late 1981, the program hit a production level of $400 million a year (made possible by significant unspent funds from prior years), only to be forced rapidly to cut back operations as funding dropped. Such fluctuations obviously make solid program management, maximum program efficiency, and a stable, skilled work force very difficult (if not impossible) to maintain.

The program seems now to be running much more smoothly and effectively. But it has not been an easy process. The quality of the work, a shortfall in the amount of energy actually saved, inadequate financial management and program monitoring, and failure to adequately reach rental units have been some of the more serious shortcomings of the program. Some of these problems have been finally and effectively tackled, for example, through the reversal of the early ruling that CETA labor must be the essential source of local program manpower, despite the unavailability of CETA slots locally. Others remain, some of these rooted in the rigidities of the statutory or administrative scheme. We are happy to see that DOE has addressed some of those problems in its recent regulations. Those regulations offer the prospect of significant improvements in program operation. But some major shortcomings can only be dealt with through legislation.

For example, our analysis of the program repeatedly brought us up against the $150 repair limit -- a limit which almost everyone views as an arbitrary bar to useful weatherization of many units. Similar, although less vocal criticisms have been raised about the ceiling on expenditures per dwelling. The statute also fails to provide for a required educational component, aimed at ensuring that assisted households know how to most fully capitalize on the weatherization aid provided. (New DOE regulations now authorize expenditures in this area.)

One of the other major problems facing the program is that of rental housing, a failing repeatedly brought home to us by our Ford work. Although the fault may not lie directly in the statute, and DOE has given this subject renewed attention, it now appears clear that statutory directives may be necessary to break the cycle of program failure here. While the greatest concentrations of low-income households are found in urban areas, and while approximately half of the poor live in rental housing, the program has generally failed to reach these important subgroups. The Center's analysis found three common reasons given by program operators for the difficulty in this area: 1) rental weatherization requires landlord cooperation which is difficult to obtain; 2) multi-family units present unique technical and administrative problems; and 3) most agencies have long waiting lists of eligible owner-occupied homes, which are easier to process and which provide benefits basically to low-income households themselves, and are thus free of the "taint" of a possible windfall to the landlord. Although some urban agencies in fact operate successful large-scale weatherization projects in conjunction with public housing authorities, or in some instances with major landlords, they are the exceptions.

Finally, progress in improved energy efficiency under the program has been inconsistent, within local programs and across the country. Our Ford work indicates that the sources of this shortcoming are multi-fold: automatic installation of weatherization measures beginning at the top of the DOE checklist without careful consideration of the dwelling unit's specific needs; shortcomings in monitoring and evaluation, both of individual work and local program-wide results; inadequate technical assistance and monitoring by DOE; the arbitrary repair limit, etc.

This Ford Foundation-funded work, reinforced by the current political restraints on a thorough revamping of the weatherization effort, has led us to believe that a rejuvenated

DOE program offers the only realistic hope -- and an important hope -- for a significant low-income conservation effort.

### Weatherization Legislation Pending Before the Senate

The National Consumer Law Center is gratified to see weatherization reform legislation pending before the Senate, in both S.1953, introduced by Senator Heinz, S.2629, introduced by Senator Cohen, and H.R. 2439, which passed the House earlier in the year. All of these pieces of legislation address numerous areas which are key to an improved program design, as well as improved overall program performance. They do so by clarifying the program's intent, through strengthened monitoring and uniform reporting language, through increased flexibility in allowable measures and techniques, and perhaps most important, by providing a multi-year authorization to give some needed stability in funding. This has been sadly lacking in recent years.

For example, through our Ford Foundation sponsored work, we found many program advocates who felt consumer education was critical to the provision of effective weatherization services and that its omission from the statute was one of the largest program design shortcomings. With conservation education, households would learn how to maintain the quality of the weatherization work, and how to best utilize the energy efficiency improvements that had been made. The program is certain to achieve better energy efficiency overall if residents better understand how energy can be wasted and how to properly care for the improvements that have been installed. While DOE's revised regulations finally allow the use of program funds to provide consumer conservation education to those whose homes are weatherized, the concept needs to be enshrined more firmly in program design. We think these bills do just that.

The removal of the rather arbitrary $150 repair limit from the statute is another very important provision of these two bills. Our research found that many homes were not weatherized because necessary repairs to the roof, building envelope, wiring, or the furnace (or combination thereof) would cost more than $150, and effective, safe weatherization could not be done without those repairs first being done. This repair limit has been a source of constant criticism for several years, and it is well past time for Congressional action on it.

We are also pleased to see that these bills give an increased emphasis to rental dwellings and the testing of alternative approaches to rental housing through the establishment of a multi-family program component in the program.

I don't wish to dwell upon the need for specific statutory reforms, or the particular attributes of specific pieces of legislation. Center staff would be happy to provide views on these matters to subcommittee members or staff. The important thing is that these pieces of legislation constitute real steps in the right direction and we urge the Senate to join quickly with the House in bringing about reforms necessary to ensure the effectiveness of this program. However, I do want to stress the need for Congress to adequately address the program's need, and poor people's need, for real stability in a multi-year authorization with increased authorization levels for this effort.

The weatherization program demonstrated its capacity to operate at an annualized rate of $400 million in late 1980. During our research on this program, states indicated to us they would not have difficulty doubling -- and some said quadrupling -- the size of their program in a relatively short time if they knew there was a steady commitment of funds. In addition, with the loss of CETA labor, the labor expense component of the program has increased substantially, making it more expensive to maintain existing program production. So, we are convinced that the program capacity for significant expansion is there.

We also know that at current rates it will take over 50 years to weatherize the estimated remaining eligible dwellings. With greater and greater need for energy assistance being demonstrated, with utility bill arrearages creating a mounting problem, and with only approximately 7 million households (only about 35 percent of the nationally eligible population) receiving energy assistance, the current program's ability to reach approximately 200,000 low-income homes per year clearly does not make the grade.

Weatherization is not the entire answer, but it is an extremely important part of the answer. The benefits that accrue to the household in need are clear and tangible: energy consumption can be cut, providing some insulation against rising energy costs, as well as providing a greater degree of comfort and safety in the weatherized dwelling. This is a long-term investment that pays back year after year and provides a chance for the household both to escape a recurring crisis situation regarding energy bills and to become more self-reliant in handling home energy costs. But the benefits of the program do not stop there. Saving of valuable, finite energy resources is in the national security interest. Moreover, weatherization means that the ever-growing export of energy dollars can be curbed, with more dollars available to spend locally for other essential goods and services. Weatherization also provides thousands of jobs across the country -- and each employee creates additional tax revenue -- and can spur small businesses and manufacturers who provide the necessary goods and services for the program. And, of course, the improved energy efficiency provided through weatherization produces a large new source of clean, renewable, and much less expensive energy.

There is a well-deserved focus on budget deficits and fiscal restraint, but decisions made on programs -- like weatherization -- have a long-term impact and deserve to be made from a forward-looking perspective. Given that nearly $2 billion is spent on energy assistance and that most people would say it is woefully inadequate to deal with the growing energy crisis of poor households, can we afford not to make a substantial investment in conservation improvements for these households? The answer seems apparent, and that is why we urge authorization levels which will begin to put the program more in line with the job that needs to be done.

Senator **Warner**. Mr. McKee.

## STATEMENT OF JAMES G. McKEE, CHIEF EXECUTIVE OFFICER, PHILADELPHIA GAS WORKS

Mr. **McKee**. Thank you, Senator. We appreciate the opportunity to testify before this committee this morning.

Senator **Warner**. I urge you to use the microphone. While I might be able to hear, there are a lot of people who have come from long distances and given of their valuable time to hear what you have to say.

Mr. **McKee**. Thank you, sir. I have been accused of being so noisy that I don't really need a microphone in the past.

Senator **Warner**. You would fit well in the Senate then.

Mr. **McKee**. I am Jim McKee, chief executive officer of the Philadelphia Gas Works, and a member of the board of directors of the Utility Emergency Services Fund in the city of Philadelphia.

I would like to discuss this morning just for a brief moment some of the specific impacts of these programs upon people in the city of Philadelphia, and I think in other major urban areas in the United States. I would like to talk about Philadelphia specifically and some 125,000 poor Philadelphia households that are struggling just to maintain heat in their homes.

We share many of the concerns that have been expressed by this panel up to the moment, and to expedite time I will not repeat those particular concerns. They will be in the document submitted.

I have worked in the gas industry all of my life. I thought I had concluded my career at the Columbia Gas System when I was chief executive of the distribution and transmission companies, and then the city of Philadelphia asked me to come to Philadelphia and help them with some serious problems in that area.

I had been responsible for annual revenues in excess of $1 billion, some 2 million customers, and 4,000 employees scattered over 7 States while I was with Columbia.

I joined Philadelphia Gas Works in September 1982 at the request of the city. PGW is the country's largest municipal utility. It serves over 500,000 residential customers who reside within the city limits. When I arrived, the company was in trouble. It was sliding toward financial collapse. Its cash flow situation was bad. Nearly 200,000 customers were behind in their gas bills; 40,000 of those were considered chronic delinquents. The company had just received its second rate hike in 8 months and its bond rating had just dropped.

The purpose in suggesting these facts to this committee is that they directly, I think, indicate the scope of the social problem that exists in some of the major Northeast cities. I thought the problem when I first arrived, having the business background all of my life, that it could be quickly solved and we could get a handle on it. It seemed to be a strict collections policy. It seemed to me that a strict collections policy would quickly weed out the very large number of deadbeats, the people who were robbing the system and their fellow consumers. Shutting them off, together with some other cost-saving measures we have been able to put in place, would quickly get the company back into fiscal soundness.

The job turned out to be much more complicated than I anticipated. Philadelphia's poverty problem which is similar to that of a great many other urban areas in the country is just much, much, much worse than anyone outside of a city like that can possibly perceive. I know that there are deadbeats out there but there are a great deal fewer than I had anticipated, and they are only a small part of the total problem. Philadelphia's pervasive poverty is the real big problem. There are 125,000 households in Philadelphia with incomes below the Federal poverty line. That is out of about 700,000 households in total as I recall. One out of every four poor households are elderly. We have 500,000 customers, and 104,000 of those are senior citizens.

One out of every three poor households is headed by a single woman with children. It is our job, the Federal Government's and yours, mine, the city, the State, to find a way to assure service to these thousands of struggling households without unfairly burdening the rest of the paying consumers.

We are determined to set up a system that separates those who can pay their bills from those who can't, but in addition, we are determined to do all that we possibly can for those struggling desperately to stay afloat, those people with inadequate incomes. I am here to tell you today just about one of the creative private efforts that is taking place, and also to remind the Federal Government that it must do its share as well.

One private sector effort in Philadelphia is the Utility Emergency Services Fund that I mentioned earlier. It is an independent, nonprofit organization with two dozen board members. They include city officials, religious leaders, representatives of community organizations, business executives, labor representatives, a school board member, and uniquely the chief executives of all three utilities—PGW, which is the municipal gas company, the city-owned water department, and an investor-owned Philadelphia Electric Co.

UESF clients are poverty level households with a utility shutoff notice. Their arrearages are reduced to zero dollars with funds provided by individual donations, business and foundation contributions, and local government funds, all of which are matched on a dollar-for-dollar basis by utility bill credits. So far, PGW has put up in excess in the past year of $1 million in these credits. In 1 year the fund has served over 7,000 clients and settled past bills of more than $3 million.

The fund is about to test a program that I think will be of particular interest to this subcommittee. The program is designed to help those who want to do everything reasonably possible to pay their bills. A group of the fund's clients will receive a full weatherization package, a conservation education program, and budget counseling. We are not aware of any Government low-income energy assistance program that now coordinates all of these efforts and targets them on a priority basis to the households most in need. I hope to be able to report to you in a year that, what we have learned that would improve federally funded assistance in the Weatherization Program.

Our test program will serve only 200 households, and I would be remiss in not suggesting that this isn't the first of the weatherization that has been done in Philadelphia. The number slips me now, but something in excess of 1,100 homes have been weatherized through the other programs up to this point in time.

The 200 households this year will be purely a test of this total package program. The Government-funded programs, however, must be looked to address the needs of the great majority of poor households in the country as has been identified earlier by this panel. The fund has been able to do so much in its relatively short existence because of the broad support it has throughout the Philadelphia community. That support comes in all amounts, and I know that every dollar contributed is received by people with gratitude. The fund receives numbers of $1 and $2 contributions from families throughout the city.

The union representing the PGW's workers, including those who have the thankless and sometimes dangerous job of enforcing our collection procedures, contributed $25,000 for the fund. When Philadelphia Electric Co. included a bill stuffer to its customers, it raised more than one-quarter of a million dollars for the fund. Individual customers who have been helped reimburse the fund.

I also know that there are other fuel funds throughout the country raising millions of dollars to supplement the Low-Income Home Energy Assistance Program. We hosted in Philadelphia just recently a meeting attended by representatives of 12 funds from places such as Pittsburgh, Denver, St. Louis, Detroit, and several others at which it was estimated that as much as $30 to $40 million was being raised privately across the country to maintain service to poor households.

The private sector is beginning to respond. It can, and in this time of declining social assistance payments, it must do more, but the most generous private support can only do so much. It has been estimated that $30 million in additional assistance is necessary in Philadelphia alone to close the gap between currently available funds for the poor and the cost of providing necessary utility service.

I must report that in the face of that number, despite the best of intentions, local resources alone cannot close this gap. I want to hold down Government spending as much as anyone else and not to waste a single dollar of taxpayers' money, but those customers who must have heat to survive need every dollar that can be made available for low-income energy assistance.

The current level of LIHEAP funding does not allow for adequate grants to households in need. The current level of funding for Department of Energy weatherization programs does not adequately respond to the need as I see it every day in my job. Oil overcharge funds are critically needed to supplement current Federal budget authorizations for low-income energy assistance and home weatherization. They should not be used to substitute for regular Federal budget appropriations from the general fund of the U.S. Treasury as the bill before you would provide.

I thank you, sir.

[The prepared statement of Mr. McKee follows:]

SENATE SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY

JUNE 14, 1984

TESTIMONY OF JAMES G. McKEE, CHIEF EXECUTIVE OFFICER

THE PHILADELPHIA GAS WORKS
1800 North 9th Street
Philadelphia, PA 19122

# SENATE SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY

JUNE 14, 1984

## TESTIMONY OF JAMES G. McKEE, CHIEF EXECUTIVE OFFICER, THE PHILADELPHIA GAS WORKS, PHILADELPHIA, PA

I am Jim McKee, Chief Executive Officer of The Philadelphia Gas Works.

I appreciate this opportunity to testify before the Subcommittee. I want to tell you about:

+ How more than 125,000 poor Philadelphia households struggle to pay their heating bills;
+ One very creative and successful way that the utilities have joined in partnership with local government and civic leaders to address this terrible situation;
+ Why, given the "nearly unsolvable dilemma of urban poverty," local resources alone can only make a dent in the problem;
+ Why we need more, not less energy assistance for the poor; and, therefore,
+ Why Senate Bill 2370 is an unwise piece of legislation.

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I have worked in the gas industry all my life. I started working with my father and grandfather in the Oklahoma oil and gas fields. I thought I had concluded my career at the Columbia Gas System, where I was chief executive of its distribution and transmission subsidiaries. I was responsible for a business with annual revenues of more than $1 billion, 2,000,000 customers, and 4,000 employees.

I came to the Philadelphia Gas Works in September of 1982 at the request of City Government. PGW is the country's largest municipally utility, serving over 500,000 residential customers who reside inside the City limits. When I arrived, the Company was in trouble; it was sliding toward financial collapse. Its cash flow situation was bad: nearly 200,000 customers were behind on their gas bills; 40,000 were "chronic delinquents." The Company had just received its second rate hike in 8 months and its bond rating had just dropped.

I believed I could handle the problem. I thought a strict collections policy would quickly weed out a very large number of deadbeats; people who were robbing the system and their fellow consumers. Shutting them off (together with some other cost savings measures we have been able to put in place) would quickly get the Company back to fiscal soundness.

But the job has turned out to be much more complicated. Philadelphia's poverty problem, which is similar to that of many other urban areas in the country, is just much, much worse than I ever imagined.

I know there are deadbeats out there, and when I find them it gives me pleasure to shut them off. But they're fewer than I thought and only a part of the problem.

Philadelphia's pervasive poverty is the big problem.

- There are 125,000 households in Philadelphia with incomes below the federal poverty line.
- One out of every four poor households are elderly; and one out of every three poor households is headed by a single woman with children.

Let me be specific:

- A mother with two children spending 10% of her $340 monthly income for an average amount of gas heat, after receiving LIHEAP benefits, would still need an additional $250 to pay the annual bill.[1]

It is our job, yours and mine, to find a way to assure service to that family, and many thousands of other struggling households, without unfairly burdening the remaining ratepayers.

A local newspaper described managing PGW as one of the most thankless gas utility jobs in the nation. Perhaps. But I don't take on anything that I'm not determined to do well--and to finish.

We are determined to set up a system that separates those who can pay their bills from those who can't. But, in addition, we will do all we can for those who are struggling desperately to stay afloat with inadequate incomes.

I'm here today to tell you about just one of our creative efforts, and also to remind the federal government that it must do its fair share as well.

One private sector effort in Philadelphia is the Utility Emergency Services Fund. UESF is an independent non-profit organization with two dozen Board members. They include City officials, religious leaders, representatives of community organizations, business executives, labor representatives, a school board member and the chief executives of the three local utilities: PGW, the

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1. The preceding demographic information is taken from The Home Heating Needs of Low Income Households in Philadelphia: Dimensions of a Persistent Problem (a copy of which is included for the record).

City Water Department, and the investor-owned Philadelphia Electric Company.

UESF clients are poverty-level households with a utility shut-off notice. Their arrearages are reduced to $0 with funds provided by individual donations, business and foundation contributions, and local government funds, all of which are matched on a dollar-for-dollar basis by utility bill credits. So far, PGW has put up $1,000,000 in credits.

In one year, the Fund has served over 7,000 clients and settled past bills of more than $3,000,000.

The Fund is about to test a program to help those who want to do everything reasonably possible to pay their bills. A group of the Fund's clients will receive a full weatherization package, a conservation education program, and budget counseling. We are not aware of any government low-income energy assistance program that now coordinates all of these efforts and targets them on a priority basis to households most in need.

I hope to be able to report to you in a year what we've learned that would improve federally-funded assistance and weatherization programs. Our test program will serve only 200 households; government-funded programs will have to address the needs of the great majority of poor households in the country.

The Fund has been able to so much in its relatively short existence because of the broad support it has throughout the Philadelphia community. That support comes in all amounts -- and I know that every dollar contributed is received with gratitude.

- The Fund receives countless $1 and $2 contributions from families throughout the City.
- The union representing PGW's workers, including those who have the thankless--and sometimes dangerous--job of enforcing our collection procedures, contributed $25,000.
- When Philadelphia Electric Company included a bill-stuffer to its customers, it raised more than a quarter of a million dollars.
- There is a PGW customer I recently met who owns a small apartment building. Because of a recent rate reduction, his monthly gas cost went down by $65. Every month, he sends $65 to UESF as a contribution.

I also know there are other fuel funds throughout the country raising millions of dollars to supplement the Low-Income Home Energy Assistance Program. There was a recent meeting we hosted in Philadelphia attended by representatives of 12 funds from places such as Pittsburgh, Denver, St. Louis, Detroit and others, at which it was estimated that as much as $30-40 million is being raised privately across the country to maintain service to poor households. The private sector is beginning to respond, it can, and in this time of declining social assistance payments, must do more.

But the most generous private support can do only so much. It has been estimated that $30 million in additional assistance is necessary in Philadelphia alone to to close the gap between currently available funds for the poor and the cost of providing necessary utility service. I must report that in the face of that number, despite the best of intentions, local resources alone cannot close this gap.

I want to hold down government spending and not waste a dollar of taxpayer money. But our poor customers need every dollar that can be made available for low-income energy assistance.

The current level of LIHEAP funding does not allow for adequate grants to households in need.

The current level of funding for Department of Energy weatherization programs does not adequately respond to the need, as I see it every day in my job.

"Oil Overcharge Funds" are critically needed to supplement current federal budget authorizations for low-income energy assistance and home weatherization. They should not be used to substitute for regular federal budget appropriations from the general fund of the U.S. Treasury, as the Bill before you would provide.

Senator **Warner**. Thank you, Mr. McKee. We welcome Senator Bradley to the hearing. Senator Bradley, we have now heard from each of these witnesses. Chairman Weicker had to go to the floor for an amendment. It is my intention now to ask the panel some questions of each of the witnesses, but feel free to join in at any time you wish.

First, Mr. McKee, I think that Philadelphia, the City of Brotherly Love, is to be congratulated on their initiatives in this area, and I am struck by that $30 million figure, and that is just in 1 fiscal year.

Mr. **McKee**. Yes, sir.

Senator **Warner**. Do you feel that public utilities should provide greater assistance in participating in these weatherization programs?

Mr. **McKee**. Yes, sir.

Senator **Warner**. Do you see any interest in other utilities elsewhere in using your initiatives as a role model?

Mr. **McKee**. Yes, sir; in our activities through the American Gas Association we see a great deal of interest in these kind of programs throughout the industry.

To be more specific than that at this time I can't be, Senator, but we could, we will provide you with other programs and other activities that are being accomplished by other utilities.

Senator **Warner**. Mr. Parker, you have spent a great deal of time I can tell by your testimony in this area, and you have a very good grasp of it, the interrelationship between the court suit, the Exxon suit and the elective process up here. I would like to solicit a little advice from you, and that advice being recognizing that this is probably a short session of the Congress and that the Supreme Court renders its opinions on a schedule known only to the nine, what advice would you give me on renewing the efforts of the Warner amendment in this session in Congress?

Mr. **Parker**. Senator Warner, I would like to suggest that Mr. Hill here should respond to that question.

Senator **Warner**. Sure, and please use the microphone.

Mr. **Hill**. Senator, one thing that is clear is that the major chunks of money that the administration is talking about in this legislation will not be seen for 1 year or longer.

Senator **Warner**. Minimum of 1 year in my judgment.

Mr. **Hill**. The *Exxon* case, if the court of appeals affirms the district court order in *Exxon* which adopts the Warner amendment mechanism, that is the chunk of money that could come out first.

The money that is before the Office of Hearings and Appeals is still some time off because of administrative, where that administrative process stands, and the stripper well litigation which DOE witnesses said could become available first is in the district court level, and while liability is determined, the remedy has not been up to the court of appeals at all, so I would anticipate that there would be a major fight over the remedy coming out of that case, and that that matter could find its way at least on to the Supreme Court ultimately, so that the money is not going to be available in any major amount for a significant period of time, but it is our position that the Office of Hearings and Appeals process ought to be allowed to work.

I think that if it works the way it looks at this point as though it will work, it will be approximating the results of the Warner amendment. Its procedures have enshrined the major principles of the Warner amendment in terms of low administrative costs, guaranteeing that funds are used in a supplementary fashion. In short, it is a process we ought to look at for the next year on the brink of some major decisions. Congress ought to engage in oversight and I think come back to the issue 1 year from now and see how that process is working.

Senator WARNER. Back again to the question, you have probably got just a few weeks of this summer left to get a repeated Warner amendment achieved. We plan to recess I think the first of October for the elections, and following that there may be a lameduck session. We are looking at that very narrow window of time in which legislation could be used.

Mr. HILL. I would urge that there not be legislation this year, that that process be allowed to work, that the court cases be allowed to reach their decisions, and that that matter may be ripe for a more educated decision 1 year from now than it is right now.

Senator WARNER. You would not recommend the repeating of the Warner amendment?

Mr. HILL. No, I would not.

Senator WARNER. Is that view shared or disagreed with by other members of the panel?

Mr. BURGESS. Mr. Chairman, I certainly——

Senator WARNER. Could you use the microphone?

Mr. BURGESS. My name is Robert Burgess, and I certainly share the views of the gentleman. There should not be any legislation this year, and you should look at it next year.

Senator WARNER. So that represents a unanimous—Ms. Ortiz, would you care to comment?

Ms. ORTIZ. Senator Warner, CONEG has no official position on this issue, but we would support a Warner-type amendment giving the money back to the States, but there has been no official language.

Senator WARNER. That was my next question. If it was the judgment that we go forward with another legislative initiative, how would you modify it from what I and others who were able to achieve that were able to achieve last year?

Ms. ORTIZ. I would like to refer the question to Ms. DeBarros.

Ms. DEBARROS. Janice DeBarros, deputy assistant secretary, Massachusetts Executive Office of Community Development—while CONEG does not have an official position on that particular issue, I think particularly in Massachusetts we have been pleased with the flexibility of the Warner amendment in giving States the option to choose from among a series of targeted programs, the type of population that it will serve under the Warner moneys.

I think it is key here to stress a point that was made earlier, that the Warner amendment moneys were intended to supplement these five programs which have received cuts and/or level funding over the past several years. There could be some additional flexibility within the type of programs themselves under that amendment.

For instance, in the SECP program, the State Energy Conservation Program, regulations on that program prevent actual installation of materials, and other types of finance programs are not specifically low income oriented. Some flexibility in program design would be appreciated, but the targeting of the moneys to those specific programs is there, and we would support that.

Mr. **Hill**. I have two suggestions if Congress were to move ahead on that front.

Senator **Warner**. I think Congress is going to be guided very much by the testimony we are receiving here today.

Mr. **Hill**. Well, two things that I think ought to be done—one is that there ought to be a requirement of some sort of public procedure before the States decide how to use the money. That is not to say the States didn't do a responsible job in most cases with the Warner amendment money, but in many cases decisions were made without adequate public input that are required under virtually every other Federal effort, virtually every Federal effort in providing money to States.

Second, I think we should do a better job and acquire a monitoring process so that we can see in better detail what actually the State did with the money and so that we can feel assured that the money was in fact used responsibly.

Senator **Warner**. As a followup, what portion of the $200 million distributed under the fiscal year 1983 Warner amendment went to fund State administration and personnel salaries? Ms. Ortiz, do you have a figure on that? Please feel free to indicate that you would prefer to provide those answers for the record.

Ms. **Ortiz**. No, Senator Warner. I will answer the question. We do not use any of the Warner money for State administrative money. There is a pass-through to grantees of the programs that they can use some money for administrative funds, but the Warner legislation I believe does not allow the State to maintain any of the money for their direct administrative costs.

Senator **Warner**. Yes, Mr. McKee?

Mr. **McKee**. Mr. Chairman, I am advised that it would be beneficial for the Warner amendment to be passed this year if it is possible to do so.

I am not in the position at this time to even suggest any changes in it, but we would like to see the Warner amendment.

Senator **Warner**. You would like to see a repeat of that effort this year?

Mr. **McKee**. Yes.

Senator **Warner**. And the level of funding, 200 again?

Mr. **McKee**. I think when you ask me about the level of funding my answer has to be every time that what is available because whatever it is, it isn't going to be adequate, sir.

Senator **Warner**. Senator Bradley, would you care to ask questions?

Mr. **Burgess**. Mr. Chairman——

Senator **Bradley**. Thank you, Mr. Chairman. I have just a few questions.

Could any member of the panel tell me why in their view a more targeted program of three instead of five is better? Why is it better to take the money from the overcharges and put it in the three programs as opposed to the five that exist under Senator Warner's approach?

Ms. **Ortiz**. Senator Bradley, we would not support that position. In fact, certain of the Warner money has been used with the programs that were not within the three of this proposed legislation.

Senator **Warner**. I want to hear, and I lost the second part for a moment with the bell.

Senator **Bradley**. Essentially what I asked them was another way of asking the question, Did they support the administration proposal which was to take the overcharges and put it into the three programs?

Ms. **Ortiz**. The response, Senator Warner, was that we would not, that if we used Warner money, as an example, we put money into programs that were not within the three. In fact, we did not put the money into the three programs that are being recommended under this proposed bill except insofar as we did——

Senator **Bradley**. You didn't do that, but I am saying do you support the administration?

Ms. **Ortiz**. We would not, sir.

Senator **Bradley**. And that is why?

Ms. **Ortiz**. We would want the added flexibility.

Senator **Bradley**. In other words, you would want the block grant essentially to the Governor? That is the thing that you would want most?

Ms. **Ortiz**. We would prefer that, sir.

Senator **Bradley**. Anyone else on the panel?

Mr. **Hill**. Well, if the Warner amendment formulation is to pass this year, I think we would like to see programs identified. We oppose essentially all the elements of the administration proposal on this, also the narrowing of the three programs.

I think we would go along with broad programs to be identified out of the Warner amendment.

Senator **Bradley**. Wait 1 minute. You don't want to just send money back to the Governor, and yet you don't want to identify the three programs that the administration has identified.

What do you want?

Mr. **Hill**. Well, our basic objection to the administration's bill is that it simply backs out appropriated dollars, replaces them essentially with consumer damages from past years.

Those moneys ought to be returned as the Warner amendment guaranteed so they are used in a supplemental fashion, not to replace State and local or Federal dollars, but used, made up of past injuries. That is our threshold objection to the administration's proposal.

If there is to be a piece of legislation passed this year which takes money out of the administrative process and distributes it to the States, we agree that the States ought to be distributors of unclaimed oil overcharge money. Then it seems to me that it is fine to use the five programs identified in the Warner amendment to give the States some flexibility. Maybe the programs ought to be expanded to some extent. It seems to me the Solar and Conservation Bank is a logical additional vehicle.

Senator **Bradley**. How do you feel that those five programs handle the problem of restitution of damages?

Mr. **Hill**. Well, again I would like to have that process monitored just like I believe it is important to see how the Office of

Hearings and Appeals administrative process proceeds, and if in fact a year down the road we determine that, for example, low-income households are not participating up to their fair share in Warner amendment-type moneys or Office of Hearings and Appeals distributions, then it seems to me that there would be need for Congress to step in and take action to assure that that fair participation existed.

Senator **Bradley**. Well, I guess my question is you don't think if you send money to low-income energy assistance, et cetera, that you are going to deal with the restitution of damages meaning all the people that had to pay the higher price? I guess that is what you mean, and so I am saying how do the five programs deal with the damages to all the people who had to pay the higher prices?

Mr. **Hill**. Two of those programs provide the States avenues to spread the benefits across the spectrum of the affected population.

Senator **Bradley**. Which were those two?

Mr. **Hill**. That is the State Conservation Grant Program and the energy extension service.

Senator **Bradley**. So that if the State chose, it could give it to upper income people as well as lower income people?

Mr. **Hill**. Yes. That's right.

Senator **Bradley**. And you support the concept of giving this money to upper income people as well as lower income people?

Mr. **Hill**. Well, clearly the greatest need is on the part of low-income people. That is the crying need, and I would certainly think that a major chunk of that money ought to be targeted to low income people. We have here operating funds that were accumulated under a theory of restitution, and I think it is the argument that the funds ought to be to some extent spread across, the benefits ought to be spread across the affected population as well.

Senator **Bradley**. Do other members of the panel agree that the Governor should have the flexibility to give these funds to upper income people as well as lower income people?

Mr. **Burgess**. Mr. Chairman, I think the Governor should have some flexibility, but due to the fact that there is not enough energy assistance money now especially in the State of Connecticut—we ran short this year—the majority of that money should be targeted for low-income people assistance.

Senator **Bradley**. All right. Why not just do it? Why not just put it in low-income energy assistance?

Mr. **Burgess**. I think when you give the Governor that flexibility without any direction from Congress they would opt sometimes to spend money where they are probably going to get the most votes.

I think some direction should come from Congress due to the Federal moneys. If it is not great enough, a bigger share of this money should be directed by Congress to the Governors, mandate this money be spent for low-income energy assistance to affect the low-income people in the State.

Senator **Bradley**. OK. Now maybe I am hearing things incorrectly, but it seems to me that that is what the administration is trying to do when they say send the money back to low-income energy assistance.

Tell me why that is not the case.

Ms. **DeBarros**. If I might respond to that, Senator Bradley, I think it is important to note that at the State level at least and certainly in Massachusetts we would have been forced to put these moneys that were freed up from the Warner amendment into our low-income programs if we did not have a substantial State commitment which we do in Massachusetts. Most other States do not have that same commitment.

I think it is important to recognize that these energy-related programs are appropriate mechanisms for reaching the targeted population under the provisions of the appeals process, but there are many areas of those programs that are either inadequately funded or where there are regulatory restrictions where the Warner moneys have been used to assist us in reaching a greater level of population and doing more types of things.

For instance, in the Weatherization Program where there is a legislative repair limit, many States have been able to use the Warner money to raise that limit or to supplement——

Senator **Bradley**. I'm sorry. Where there was what?

Ms. **DeBarros**. In the Weatherization Program as administered by the Department of Energy there is a legislative limit on repairs that can be done. There is a $150 limit. Many, many times insulation might be put in an attic and there is a hole in the roof. The effect of the insulation will not be felt.

Many States have used Warner money to fix the hole in the roof.

Senator **Bradley**. Well, as I see what the administration bill says, that the money goes to low-income energy assistance, to low-income weatherization, and to DOE schools and hospitals programs, so wouldn't you get that money if it was targeted to these three programs for precisely the thing that you mentioned?

Ms. **DeBarros**. As a matter of fact, we would not, and there is a separate issue here of supplementing rather than supplanting the Federal commitment, but if those moneys went directly into those three programs, I assume that the regulations that govern those three programs would take effect, and as it stands now, the type of issue I just related would not be serviced by putting money into the weatherization program.

Senator **Bradley**. So that the example you gave was a weatherization example, but it would have been excluded had it—it could not have been done under the Federal program because of the regulation?

Ms. **DeBarros**. That's right. There is a legislated limit on repairs in that program.

Mr. **Hill**. Senator Bradley, the fundamental point and the point on which, one of the many points on which this panel is unanimous is that the basic problem with the administration's proposal is that it does not allow these funds to be used to make up for past damages.

What it does is simply use the funds within identified authorization limits for these programs which are basically the same as the authorization limits and the appropriation levels over the last several years.

It requires that money to be used to back out Federal tax dollars for these programs, and the net result will be that next year if this legislation were to pass, the weatherization program would have an authorization level of essentially the same. Presumably the appropriation level would be essentially the same, but it would be funded out of consumer damages rather than tax dollars.

Further, nobody know if in fact the authorization level for energy assistance would be lower.

Senator **Bradley**. And you are suggesting what option, what alternative?

Mr. **Hill**. I am suggesting that this money must be used because of its nature, because of the manner in which it was accumulated, and because of its source in past overcharges in some way to supplement current Federal, State, and local levels.

Senator **Bradley**. In addition?

Mr. **Hill**. That's right.

Senator **Bradley**. Do you have a suggestion as to how that could be done?

Mr. **Hill**. I think that is being done at this point through the administrative process at the Office of Hearings and Appeals. One thing to remember, another thing to remember about the administration's bill is that——

Senator **Bradley**. So you are saying that there is no congressional action needed?

Mr. **Hill**. That's right.

Senator **Warner**. That is essentially it, Senator. I'm glad you stressed that point again, because I still have some concern about the flow of these funds, but you are confident this process will keep the funds rolling?

Mr. **Hill**. The Warner amendment——

Senator **Warner**. Sets the precedent.

Mr. **Hill**. That's right. It is critical to establish the principle which is implicit in the idea of restitution anyway, that these funds must be used to supplement, not to replace.

Senator **Warner**. Having expressed the will of the Congress, the administration is now through the appeals process moving the money?

Mr. **Hill**. It is moving it as quickly as it would move under the administration's bill. The value of the Warner amendment at this point is that it would assure the money is out there at this point or before next winter. The administration's bill will not move this money any more quickly than the Office of Hearings and Appeals process because in both cases the money must run through the first stage at the Office of Hearings and Appeals, so the money is not going to become available any more quickly under the Petroleum Overcharge Restitution Act than it would be if the administrative process is allowed to run its course, and in neither case would there be a major slug of money available before next winter.

Senator **Bradley**. Could you tell me, if you take the normal pace of administrative procedures and appeals, how much money goes out? In other words, how much money has actually been given to people with restitution of damages for this program?

We have got $1.8 billion in the pot. How much has gone out because people have come in and claimed damages?

Mr. **Hill**. The actual claiming of damages will be the same under, again under the administration's bill or the current procedure, and that is a time-consuming process.

The only way to shortcut that is through the Warner amendment which says we are going to take this money, essentially cut off claimants right to it or assume when the process is over there is going to be a certain amount of money left over and we essentially take that money out at this point.

Senator **Bradley**. You asserted that what we should do and what we could do here is don't put this money on any program because the process that is now established for getting rid of this money which is giving it to those people who claim damages and win in the process, is the best way.

Now I understand how in theory that keeps restitution of damages as a little category over here that is protected, but what I want to know is how much money has actually gone out to people as a result of this process, and I don't think we have that information, Mr. Chairman. I think that we can get it.

Now my next question is if your concern is preserving the funded levels, authorized levels for these programs, and your concern is the SECP program, the State Energy Conservation Program, what if we put, if we added that to the three programs that are proposed by the administration and specified that this has to be in addition to what has been authorized in 1985? Would that be your preferable course?

Ms. **Ortiz**. Senator Bradley, I think our basic concern is to get our money back for restitution.

Senator **Bradley**. But nobody has told me how to do that. I understand the point, but nobody has told me how you do that.

Ms. **Ortiz**. If your question is, if your question is—I am not sure I understand the question. If your question is in addition to our approriation for moneys, whether we want to have a Warner-type legislation that would set it within the framework of the five programs, that is acceptable to Massachusetts.

Massachusetts does not seek to have its Federal appropriation for these programs supplanted by the proposed bill.

Senator **Bradley**. Fine, but that would be acceptable to Massachusetts?

Ms. **Ortiz**. It would be, yes.

Senator **Bradley**. Thank you very much, Mr. Chairman.

Senator **Warner**. Thank you very much, Senator Bradley, for joining us this morning, and I know you have had an active interest in this area. As a matter of fact, my recollection is you were with me on the floor at what, 4 o'clock in the morning when we got it through, weren't you?

Senator **Bradley**. Yes.

Senator **Warner**. Side by side, working together on this, and indeed Senator Heinz who had hoped to join us today was another strong supporter of this general area, and in his absence he has asked if questions could be submitted to each of the witnesses for a response.

In addition to Senator Heinz' questions, there will be my own and that of the chairman, and we would hope that in a reasonable period of time that you could complete your answers so that we can complete this record and perhaps address this bill in a full committee structure.

I pledge to you my continuing efforts in this area, and I would hope that you would feel free to come to see me, any of you who so desire, at any time, because I have staked this out as an area in my career in Congress in which I am particularly interested.

I also commend you for taking the time to come here today and provide this valuable testimony.

If there are no further statements that wish to be made, we will conclude this hearing, and I will keep the record open for what period? We will keep the record open for 2 weeks.

Thank you very much.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

# APPENDIXES

## APPENDIX I

## Responses to Additional Committee Questions

**Department of Energy**
**Washington, D.C. 20585**

June 28, 1984

Honorable Lowell P. Weicker, Jr.
Chairman, Subcommittee on Energy
Conservation and Supply
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On June 14, 1984, Under Secretary Pat Collins appeared before the Energy and Natural Resources Subcommittee on Energy Conservation and Supply to discuss S. 2370, the Petroleum Overcharge Restitution Act and the Weatherization program. Mr. Collins was accompanied by Theodore J. Garrish, General Counsel.

Following the above-named hearing, questions were submitted by the Majority and the Minority members. Enclosed are the responses to questions submitted by the Majority members. Answers to the remaining questions are being prepared and will be forwarded just as soon as they are completed.

If you have any questions, please call Ingrid Nelson or Tom Pretorius of my staff on 252-4277. They will be happy to assist you.

Sincerely,

for Thomas H. Pretorius
Robert G. Rabben
Assistant General Counsel
for Legislation

Enclosure
Set I

cc: Mr. Al Astrin

# QUESTIONS AND ANSWERS
FOLLOWING THE
JUNE 14, 1984, HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
S. 2370, "PETROLEUM OVERCHARGE RESTITUTION ACT"
AND WEATHERIZATION

SET I

## QUESTION FROM SENATOR WEICKER
## WEATHERIZATION

Question 1a: The Department has done a remarkable job in working out many of the tough problems that large new programs like weatherization often encounter. Are there any particular programmatic difficulties that might require Congressional action?

Answer: The Weatherization Assistance Program's current legislation already allows for a large measure of flexibility sufficient to manage the program efficiently and effectively. For example, the January 27, 1984, rule encourages the Weatherization Assistance Program to be responsive to local needs and incorporates changes in technology. That rule came about without changes in the legislation and we do not see a need for any at this time.

Question 1b: What is the Administration's position on S. 2629 (Cohen) and S. 1953 (Heinz), both of which make reforms in the existing weatherization program?

Answer: The Department does not have an official position on S. 2629 (Cohen). The bill is being reviewed now.

In his testimony before the Senate Select Commitee on Aging on March 2, 1984, Under Secretary Collins provided some Administration views on portions of S. 1953. The major points were:

- The Weatherization Assistance Program's January 27, 1984, rule incorporates many of the suggested technological advances and local service delivery changes contained in S. 1953. The new regulation allows States flexibility in operating the weatherization programs and reduces administrative requirements. Many of the changes suggested in S. 1953 could be dealt with more effectively by new regulations rather than legislation, as our January 27th rulemaking demonstrates.

- Some changes suggested in S. 1953 appear either unworkable or unrealistic. Such as: requirements that States and subgrantees undertake yearly studies of all units to be weatherized and validate methods for measuring energy savings, etc. The program was never set up to manage research and development projects. Most States and subgrantees do not have the resources to spare from their weatherization efforts to perform such expensive and sophisticated studies. It is not necessary to ask States to develop elaborate plans for weatherizing all eligible units every year. It is better to ask them to prepare a plan for each year's portion.

- The funding levels, specified in S. 1953, are higher than needed. The proposed Petroleum Overcharge Restitution Fund legislation, S. 2370, H.R. 4972, would provide a total of $190 million, the same as the FY 1984 appropriation level, and stable financing for the program.

## QUESTION FROM SENATOR WEICKER
## WEATHERIZATION

Question 2a: Is the weatherization program currently providing eligible households with the most cost-effective energy improvements now available in the marketplace?

Answer: Our current regulations allow CAPs to select the most cost-effective conservation measures, appropriate for a particular home. We continue to work closely with the National Bureau of Standards to test new measures as they are developed.

We will continue to look for ways to improve the relationship of cost to benefit.

Question 2b: Aren't heating system upgrades the most cost-effective investment for most households? Shouldn't we be giving he States maximum flexibility to make such improvements?

Answer: The Weatherization Assistance Program (WAP) has given the States flexibility to make very cost-effective investments. The January 27, 1984, rule gives States the option to retrofit heating systems. Most State weatherization programs are already training subgrantees to do heating system work.

If "upgrades" means furnace replacements, however, DOE does not consider this an appropriate option for the WAP. DOE's two reasons for prohibiting heating system replacements under the WAP are:

1. Replacing a heating system is very expensive, consuming too much of the program's basic resources; and

2. The WAP was designed, and has operated as, an energy-retrofit program to improve efficiency of existing low-income housing stock.

With 12 million eligible households left to weatherize, paying for expensive systems would restrict the program's benefits to fewer people.

Other Federal agencies allow for heating system replacement. It is specifically provided for in HUD's Community Development Block Grant Program (CDBG). A State could also use Low Income Home Energy Assistance Program (LIHEAP) funds to replace heating systems. Arizona, Colorado, Idaho, Massachusetts, and Minnesota have already used LIHEAP to pay for heating/cooling system replacement.

Question 2c: We understand that Oak Ridge National Labs performed a study on the jobs creation effect of the weatherization program and found it to be one of the most cost-effective ways to create jobs. The study, in fact, found that each $100 million spent created up to 5,500 jobs. Does your Department agree with these findings?

Answer: The WAP does enhance the opportunities for economic development of the CAP agency and of the locality. Third-party or innovative financing demonstration projects will show how CAPs can become self-sufficient, and make a contribution to energy conservation. Subgrantees, acting as brokers for banks and landlords, can deliver weatherization to low-income people without relying on the Federal government for funding. Subgrantees can also become an energy service company, delivering weatherization measures to a landlord's building for an arrangement based on overall energy savings.

## QUESTION FROM SENATOR WEICKER
## WEATHERIZATION

Question 3a: We understand from your testimony and from the fact that the budget for next year includes level funding for DOE weatherization that the Administration finds this program to be effective and successful -- is that a fair analysis?

Answer: The proposal to support the WAP, the Schools and Hospitals program (Institutional Programs), and the HHS Low Income Home Energy Assistance Program, through the provisions of S. 2370, indicates the Departments' continued support of these programs.

Question 3b: Are you saying that the recent DOE rulemaking issued on January 27, 1984, has perfected the program and that no legislative changes are required?

Answer: We believe that the January 27, 1984, rule made the program flexible and more effective, greatly improving it.

Making changes in the program by legislation can lock the program into programmatic areas (such as spending caps) which can only be changed by further legislation. DOE prefers to make further changes to the program through the rule making process, as the January 27, 1984 rule effectively demonstrates by improving the program under existing legislation.

## QUESTION FROM SENATOR WEICKER
## S. 2370

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| Question 4: | You state in your testimony that you believe Congress, rather than the courts, should provide guidance on the disbursement of indirect restitution for oil overcharges, yet S. 2370 does not conform to Congressional intent in that it proposes to replace and not augment funding for these energy programs.<br>Were alternatives to Section 4 of S. 2370, which would provide new or expanded benefits, considered? |
| Answer: | In formulating this proposal, we considered very carefully whether to recommend that the Congress provide that the overcharge residue (after direct claimants have been satisfied) supplement amounts appropriated to the three programs listed in Section 4 of S. 2370. We concluded for two reasons that such a recommendation is not warranted. First, the proposal would provide stability and continuity to DOE's weatherization and grants to schools and hospitals program as well as HHS's low income home energy assistance program, by making a $10-11 billion commitment over the next five years. Second, the money to fund these programs comes ultimately from the taxpayers. By reducing the amount that must be derived from the general fund of the Treasury to fund them, S. 2370 reduces the burden on all taxpayers. |

QUESTION FROM SENATOR WEICKER
S. 2370

Question 5: Last year when Congress debated the "Warner Amendment", which distributed $200 million to the States for specific energy programs, it was made clear that those funds were intended to be added to Congressional appropriations, not replace them.

In your opinion, does this legislative proposal run counter to Congressional intent, as expressed by enactment of the "Warner Amendment"?

Answer: No, we do not believe that this proposal runs counter to Congressional intent as expressed by enactment of the Warner amendment. The version of the Warner amendment that passed the Senate contained a provision that would have required us to distribute all overcharge collections (beyond those necessary to compensate claimants) to the States. That provision was deleted in conference, and the joint explanatory statement of managers in the conference report clearly states the managers intention that the Warner amendment be a one-time distribution. Thus, although the Congress used overcharge monies as a supplement to energy programs under the one-time Warner amendment distribution, other circumstances could produce different results insofar as Congressional intent is concerned.

QUESTION FROM SENATOR WEICKER
S. 2370

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| Question 6: | Is it fair to describe this legislative proposal as a deficit reduction strategy, in as much as it replaces program expenditures now being made from revenues?<br>Followup: Will the Administration's 1985 request for energy assistance and weatherization stand, regardless of the fate of this legislation? |
| Answer: | The principal purpose of this legislation is to provide a solution to the difficult problem of finding the best way of disposing of the sizeable overcharge recoveries that cannot be refunded directly to economically injured persons. It would do so through clear statutory guidance to the courts and executive branch. One by-product of the legislation would be a reduction in the Federal deficit, which would be a salutary result.<br>The Administration's budget request for the programs covered by the proposal assumes enactment of this legislation. In the absence of its enactment, the Administration would not seek appropriations for these programs. |

FOR: UNDER SECRERARY COLLINS SUBJECT: WEATHERIZATION

THE DEPARTMENT HAS DONE A REMARKABLE JOB IN WORKING OUT MANY OF THE TOUGH PROBLEMS THAT LARGE NEW PROGRAMS LIKE WEATHERIZATION OFTEN ENCOUNTER. ARE THERE ANY PARTICULAR PROGRAMMATIC DIFFICULTIES THAT MIGHT REQUIRE CONGRESSIONAL ACTION?

WHAT IS THE ADMINISTRATION'S POSITION ON S. 2629 (COHEN) AND S. 1953 (HEINZ), BOTH OF WHICH WOULD MAKE REFORMS IN THE EXISTING WEATHERIZATION PROGRAM?

FOR: UNDER SECRETARY COLLINS SUBJECT: WEATHERIZATION

IS THE WEATHERIZATION PROGRAM CURRENTLY PROVIDING ELIGIBLE HOUSEHOLDS WITH THE MOST COST-EFFECTIVE ENERGY IMPROVEMENTS NOW AVAILABLE IN THE MARKETPLACE?

FOLLOWUP: AREN'T HEATING SYSTEM UPGRADES THE MOST COST-EFFECTIVE INVESTMENT FOR MOST HOUSEHOLDS? SHOULDN'T WE BE GIVING THE STATES MAXIMUM FLEXIBILITY TO MAKE SUCH IMPROVEMENTS?

WE UNDERSTAND THAT OAK RIDGE NATIONAL LABS PERFORMED A STUDY ON THE JOBS CREATION EFFECT OF THE WEATHERIZATION PROGRAM AND FOUND IT TO BE ONE OF THE MOST COST-EFFECTIVE WAYS TO CREATE JOBS. THE STUDY, IN FACT, FOUND THAT EACH $100 MILLION SPENT CREATED UP TO 5500 JOBS. DOES YOUR DEPARTMENT AGREE WITH THESE FINDINGS?

FOR: UNDER SECRETARY COLLINS SUBJECT: WEATHERIZATION

WE UNDERSTAND FROM YOUR TESTIMONY AND FROM THE FACT THAT THE BUDGET REQUEST FOR NEXT YEAR INCLUDES LEVEL FUNDING FOR DOE WEATHERIZATION THAT THE ADMINISTRATION FINDS THIS PROGRAM TO BE EFFECTIVE AND SUCCESSFUL -- IS THAT A FAIR ANALYSIS?

ARE YOU SAYING THAT THE RECENT DOE RULEMAKING ISSUED ON JANUARY 27, 1984 HAS PERFECTED THE PROGRAM AND THAT NO LEGISLATIVE CHANGES ARE REQUIRED?

FOR: UNDER SECRETARY COLLINS SUBJECT: S. 2370

YOU STATE IN YOUR TESTIMONY THAT YOU BELIEVE CONGRESS, RATHER THAN THE COURTS, SHOULD PROVIDE GUIDANCE ON THE DISBURSEMENT OF INDIRECT RESTITUTION FOR OIL OVERCHARGES, YET S. 2370 DOES NOT CONFORM TO CONGRESSIONAL INTENT IN THAT IT PROPOSES TO REPLACE AND NOT AUGMENT FUNDING FOR THESE ENERGY PROGRAMS.

WERE ALTERNATIVES TO SECTION 4 OF S. 2370, WHICH WOULD PROVIDE NEW OR EXPANDED BENEFITS, CONSIDERED?

FOR: UNDER SECRETARY COLLINS SUBJECT: S. 2370

LAST YEAR WHEN CONGRESS DEBATED THE "WARNER AMENDMENT", WHICH DISTRIBUTED $200 MILLION TO THE STATES FOR SPECIFIC ENERGY PROGRAMS, IT WAS MADE CLEAR THAT THOSE FUNDS WERE INTENDED TO BE ADDED TO CONGRESSIONAL APPROPRIATIONS, NOT REPLACE THEM.

IN YOUR OPINION, DOES THIS LEGISLATIVE PROPOSAL RUN COUNTER TO CONGRESSIONAL INTENT, AS EXPRESSED BY ENACTMENT OF THE "WARNER AMENDMENT"?

FOR: UNDER SECRETARY COLLINS SUBJECT: S. 2370

IS IT FAIR TO DESCRIBE THIS LEGISLATIVE PROPOSAL AS A DEFICIT REDUCTION STRATEGY, IN AS MUCH AS IT REPLACES PROGRAM EXPENDITURES NOW BEING MADE FROM REVENUES?

FOLLOWUP: WILL THE ADMINISTRATION'S 1985 REQUEST FOR ENERGY ASSISTANCE AND WEATHERIZATION STAND, REGARDLESS OF THE FATE OF THIS LEGISLATION?

**Department of Energy**
**Washington, D.C. 20585**

July 16, 1984

Honorable Lowell P. Weicker, Jr.
Chairman, Subcommittee on Energy
  Conservation and Supply
Committee on Energy and Natural Resources
United States Senate
Washington, D.C.    20510

Dear Mr. Chairman:

On June 14, 1984, Under Secretary Pat Collins appeared before the Energy and Natural Resources Subcommittee on Energy Conservation and Supply to discuss S. 2370, the Petroleum Overcharge Restitution Act and the Weatherization program. Mr. Collins was accompanied by Theodore J. Garrish, General Counsel.

Following the hearing three sets of questions were submitted by the Majority and the Minority members. Enclosed are the responses to the second set of questions submitted. We responded to the first set of questions on June 28, 1984. Answers to the remaining questions are being prepared and will be forwarded just as soon as they are completed.

If you have any questions, please call Ingrid Nelson or Tom Pretorius of my staff of 252-4277. They will be happy to assist you.

Sincerely,

Robert G. Rabben
Assistant General Counsel
  for Legislation

Enclosure
  Set II

cc: Mr. Al Astrin

# QUESTIONS AND ANSWERS
FOLLOWING THE
JUNE 14, 1984, HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
S. 2370, "PETROLEUM OVERCHARGE RESTITUTION ACT"
AND WEATHERIZATION

SET II

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### Appropriations

Question 1a: If S. 2370 does not pass this year, will you support appropriations for each of the three programs mentioned in the bill?

Answer: The President's FY 1985 budget request for the Weatherization and Schools and Hospitals Program assumes enactment of the Petroleum Overcharge Restitution Act (introduced as S. 2370). If that Legislation is not enacted, we do not intend to request appropriations for those programs in FY 1985.

Question 1b: If so, what level for each program?

Answer: Not applicable.

Question 1c: If not, why not? Aren't these programs good programs?

Answer: The proposal to support the Weatherization Assistance Program, the Schools and Hospitals Program (Institutional Programs) and the HHS Low Income Home Energy Assistance Program, through the provisions of S. 2370 indicates the Administrations's commitment to these programs.

Question 1d: Won't we need FY 1985 appropriations in any event to cover the levels for these programs in the President's budget? In FY 1985, how much overcharge money do you estimate will clear the portion of the Subpart V process designed to make restitution to individual consumers who can prove they were overcharged? How much do you estimate will become available from court cases? Which cases? How much of the money from these cases will still be subject to a Subpart V proceeding?

Answer: The Administration's budget request for the programs covered by the proposal assumes enactment of this legislation. In the absence of its enactment, the Administration would not seek appropriations for these programs.

Based upon cases in which adjudication of the final first-stage claims is nearly completed, the OHA believes that $14 million in funds may become available in FY 1985 from OHA proceedings.

It is not possible to provide a precise estimate of the amount that will become available to the overcharge Fund through the courts because we do not know which settlements or orders now in the pipeline will become the subject of judicial action. Two substantial cases -- the Exxon Hawkins Field case and the Energy Reserve Stripper well case are now before the courts. These two cases, which would be covered by the legislation, amount to more than $3 billion including interest. There are no other cases currently pending at a similar magnitude.

The purpose of a Subpart V proceeding is to identify those who bore the harm of overcharges and to determine the amount owed to them. None of the money from the Exxon case (approximately $1.8 billion) would be subject to a Subpart V proceeding because the district court judge determined in that case that it would be impossible or impractical to identify and compensate the victims directly. If S. 2370 were enacted this year, all of the Exxon money would be deposited in the overcharge Fund established by S. 2370 (assuming Exxon loses its appeal). In the Energy Reserves case (more than $1 billion), the district court judge, after finding liability, referred the case to our Office of Hearings and Appeals (OHA) in an effort to identify those who bore the harm. OHA is conducting a proceeding analagous to Subpart V and is to report its findings later this year to the judge, who will then fashion the remedy.

Question 1e: When do you expect as much as $2 billion to be available from sources that, under S. 2370, would feed into the fund?

Answer: Our estimate at this time is that the funds, primarily from judical action would be available before the end of FY 1985.

Question 1f: Do you intend that S. 2370 authorize $2.075 billion per year for the Low Income Energy Assistance Program (LIEAP). Which was the amount appropriated in FY 1984 including the supplemental or only $1.875 billion, which is the amount in Public Law 98-139?

Answer: The legislation proposes $1.875 billion, the amount appropriated in Public Law 98-139.

## Questions from Senator J. Bennett Johnston

## Legal Analysis

Question 2a: In the "Hawkins Field" Exxon case, now on appeal, a Federal court ordered Exxon to pay to the States $1.7 billion to be distributed in the same manner as provided in the "Warner Amendment" (section 155 of Public Law 97-377).

If S. 2370 is enacted, would it supercede this court's decision and place the $1.7 billion in the Petroleum Restitution Overcharge Fund without the use of a Subpart V proceeding? What is the legal basis for the Congress inserting itself in ongoing litigation involving restitution to injured parties and imposing its judgment on the Courts as to what is an appropriate restitution?

Answer: Assuming that the district court's decision on liability is ultimately affirmed on appeal, the $1.7 billion in the "Hawkins Field" case would be distributed in accordance with S. 2370. Because the district court has already found that it is impossible to trace the consequences of Exxon's overcharges and thus impossible to make restitution directly to the persons who were economically injured, no Subpart V proceeding would be required under S. 2370.

Because the district court's judgment is still subject to reversal or modification on appeal, the beneficiaries of that judgment do not have a mature or unconditional right to receive the proceeds of the overcharges found by the district court. Thus, Congress can alter the law applicable to the remedy in the Exxon case.

Congress has broad power to enact legislation that would affect the outcome of ongoing litigation and frequently enacts legislation for that exact purpose. See Coca-Cola Co. v. FTC, 642 F.2d 1387, 1390 (D.C. Cir. 1981), (Soft Drink Interbrand Competition Act); Bay Guardian Co. v. Chronicle Publishing Co., 344 F.Supp. 1155 [N.D. Cal. 1972]) (Newspaper Preservation Act). Indeed the Supreme Court has held that legislation enacted after judgment in a case has been entered below but while a case is on appeal must be applied to the pending case in the absence of a clear legislative intent to the contrary unless such application would be a manifest injustice. (Bradley v. School Board of the City of Richmond , 416 U.S. 696, 711 (1974).

Question 2b: What is the legal basis for in effect declaring in the statute that all $1.7 billion in the Exxon case is in fact an overcharge? Has Exxon appealed the assessment of the overcharge?

Answer: The proposed legislation (S.2370) would not declare that the amount involved in the Exxon Case is an overcharge. It would not affect the district court's decision, now on appeal, that Exxon violated the Emergency Petroleum Allocation Act of 1973.

Question 2c: Wouldn't it be prudent for Congress to wait until there has been a final court judgement as to what the actual magnitude of the overcharge is before implementing restitutionary procedures?

Answer: The district court judge in the Exxon case determined that the overcharge amounted to more than $900 million, and that Exxon was liable for the principal plus interest. Including interest, the total to date is more than $1.7 billion.

One of the principal purposes of S. 2370 is to provide a single indirect restitution remedy for overcharges after direct restitution is made to identifiable injured persons. Given the magnitude of potential overcharge recoveries and the potential for inconsistent handling of the remedy issue by the courts, we believe it would be more prudent for Congress to provide guidance to the courts and executive branch now than to await the results of lengthy and costly litigation. Of course, amounts derived from court determinations would become available to the Fund established by S. 2370 only when those determinations are final and the appeals process has been completed.

Question 2d: The literal language of section 2(a) of S. 2370 brings under the provisions of this bill all petroleum overcharge funds "held" in escrow accounts on the date of enactment regardless of who holds the escrow funds. Therefore, in all pending cases on the date of enactment where courts hold funds in escrow, these funds would be swept into this bill. Is that intended?

Answer: Yes.

Question 2e: The subsection also indicates that after the date of enactment all escrow funds "received" are covered. Received by whom?

Answer: Received by the DOE or a court or an entity holding funds in escrow pursuant to the direction of the DOE or a court.

Question 2f: Are there no constitutional issues here? Please provide a legal analysis of the issues described above and any other constitutional issues you consider significant.

Answer: We believe there are no constitutional problems with S. 2370.

## Questions from Senator J. Bennett Johnston

### Restitution

Question 3a: Please explain how you define "restitution" and the modified versions of this concept that you spoke of in the hearing, "direct" and "indirect" restitution.

Answer: "Restitution" is a remedy whereby DOE requires a regulated firm to disgorge overcharge funds and attempts to distribute them to benefit the persons injured by the overcharges. DOE effects "direct restitution" by providing refunds to injured customers. Where it is infeasible to identify who was injured and in what amount, payments to benefit the class of injured customers, or "indirect restitution," are appropriate.

Question 3b: It appears that most of the programs you are using to make restitution base their allocation formula on consumption for residential heating in each State. Why were these particular programs selected?

Answer: The allocation formulas for the Weatherization Assistance Program and the Schools and Hospitals Program are not based directly on consumption for residential hearing, but do incorporate factors related to population and climate.

The energy programs that are included in the legislation are those we believe will provide broadly-based benefit to persons who may have been harmed by overcharges, focusing on direct assistance to low-income families and grants to schools and hospitals, where the funds will directly result in improved energy efficiency.

Question 3c: How much oil consumption goes into residential heating? Isn't that a highly regional consumption?

Answer: Based on data through 1982, approximately one-half of the annual demand for distillate fuel oil is for heating. Of that amount, 180,760,000 barrels, about half, is used for residential heating. The balance is used by the commercial, industrial and farming sectors. Data on fuel oil consumption through 1984 will be available in June 1985. The heaviest consumption of heating fuel is in the northern states.

Question 3d: How do you justify this theory of restitution? Isn't total petroleum consumption a better way to allocate money due to petroleum overcharges than residential heating costs?

Answer: Indirect restitution is a flexible concept. Each of the programs listed in section 4 of S. 2370 has its own allocation formula and distribution mechanism which would provide broadly-based benefits to those who may have been affected by overcharges. We belive that distribution through these existing programs is a reasonable approach to indirect restitution. Congress, of course, can consider numerous approaches.

Question 3e: Have you given any consideration to making restitution to small businesses who are end-use consumers? Why or why not?

Answer: The Office of Hearings and Appeals, in its "Subpart V" refund procedures, has distributed overcharge funds to businesses that have satisfied OHA's standards for obtaining refunds. Similarly, ERA has in the past made direct restitution to injured parties, including small businesses and other end-users.

Question 3f: What is the justification for making restitution for oil overcharges to someone who consumes only electricity, gas, coal or wood?

Answer: Virtually everyone in America is an oil consumer, directly or indirectly. For example, goods are delivered to markets and end users through a transportation system that is almost entirely dependent on petroleum based fuels, or those of us who do not own private automobiles and use mass transit are paying for oil distillates in taxes, at the fare box and in additional cost for delivery of goods and services. Further, many of the products that we use in our every day life contain various petroleum derivatives.

Question 3g: Why should restitution to low-income people be targeted to heating? Don't low-income people have to pay significant amounts for cooling, too? How does your bill divide up restitution between heating costs and cooling costs in allocating funds among the States?

Answer: The Petroleum Overcharge Restitution Act does not divide funds based on heating costs and cooling costs but rather on the 1984 funding levels for a number of energy-related State grant programs. Each program has its own allocation formula, and in each case population is a major factor. It would appear that the formula which causes your concern is that used for the Weatherization Program. This formula also incorporates heating and cooling degree days.

The allocation formula for the Weatherization Program squares the degree day factor--both heating and cooling-- so as to place greater emphasis on the States with extremes of climate where the greatest need for weatherization and potential for energy conservation is found.

Based on the 1981 Residential Energy Consumption Survey, the average low-income household spends 88-90 percent of its heating and cooling budget for space heating and only 10-12 percent for space cooling. Therefore, targeting toward heating is logical.

Question 3h: How much oil is used in transportation? Do any of your ideas about restitution involve restitution to the transportation sector?

Answer: Approximately 53 percent of the refined petroleum products consumed in the United States during the period 1973 through 1980 were used for transportation purposes (EIA Monthly Energy Review, February 1984). None of the programs to be funded by the PORF Act as proposed are transportation programs; however, the Low-Income Weatherization Assistance Program (WAP) and the Schools and Hospitals Program (ICP) will benefit a broad sector of the potential overcharge victims.

Questions 3i: Do you always make restitution to end-use consumers only? Why not to classes of firms - such as refiners or marketers - that had to absorb overcharges because they couldn't pass them on? Throughout the period of price controls such firms accumulated huge "banked costs" representing crude oil and refined product costs that were never passed through to consumers.

Answer: The Department, through the Subpart V proceedings conducted by OHA and also through the ERA settlement and enforcement process, has provided refunds to firms which are not end-users where it appeared that the recipients of the funds were likely to have been the parties who bore the economic injury of the overcharge. OHA has also allowed classes of customers, such as gasoline retailers, to obtain refunds where OHA has found that these customers probably absorbed a portion of the overcharges.

Question 3j: Has any court awarded restitution to these kinds of firms?

Answer: Courts have upheld agency enforcement actions and settlements that have ordered restitutionary payments to firms that were not end-users.

Questions from Senator J. Bennett Johnston

Rebuttal

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| Question 4: | Please provide the Committee with a response to the "Analysis of the Proposed 'Petroleum Overcharge Restitution Fund' (S. 2370 and H.R. 4672)" prepared by the Institute for Public Representation and the National Consumer Law Center and submitted to the Committee at the Hearing on June 14. A copy is attached. |
| Answer: | We disagree with the "Analysis" interpretation of the scope of DOE's restitutionary authority and the purpose, effect, and consitutionality of S. 2370. The bill, if enacted would not affect DOE's practice of making direct restitution to injured customers. Moreover, the mechanism it would establish for disbursing remaining funds is consistent with the courts' and the DOE's longstanding interpretations of "restitution." See, e.g., Sauder v. DOE, 648 F.2d 1341, 1340 (TECA 1979), Getty Oil Company v. DOE, 569 F.Supp. 1204 (D. Del. 1983), appeal on other grounds, No. 3-37 (TEÇA Oct. 19, 1983); Ruling 1984-1, 49 Fed. Reg. 22063 (May 25, 1984). Finally, there is no constitutional infirmity in a congressional determination as to how overcharge funds should be distributed where there is no person who is entitled to the funds. |

## Questions from J. Bennett Johnston

## Office of Hearings and Appeals Restitutionary Procedure

Question 5a: In what situations will DOE not use the Subpart V proceedings for overcharge monies under this legislation?

Answer: DOE generally favors use of Subpart V but the Administrator of ERA retains his discretion to use other restitutionary mechanisms when the believes they would be appropriate.

Question 5b: Please provide a full description of the process used by the Office of Hearings and Appeals to distribute overcharge money that has not been claimed through the Subpart V procedures designed to determine the amount of refund that is properly due to a claimant who is seeking direct restitution for economic injury. What is the statutory authority for this particular procedure? What precedents are relied on in fashioning this procedure?

Answer: Once the OHA has either adjudicated all claims filed or is able to estimate the amount of money that will be needed to satisfy all claimants, the agency examines all available data concerning the enforcement proceeding underlying the particular escrow account. In cases involving petroleum products resellers and retailers, examination of the enforcement files or information provided by the firm involved may reveal that the underlying transactions were with certain classes of customers or were in certain geographical regions. In those cases, the OHA has ordered, for example, disbursement of refund moneys to regulated industries who were required to pass through the benefits of any refunds to their customers, *e.g.*, *PVM Oil Associates, Inc./Missouri Pacific Railroad Company*, 11 DOE 85,024 (1983) (refunded to regulated transportation company), or to state governments of the states in which the consenting firm did business for use in programs targeted towards benefiting certain types of energy consumers, *e.g.*, *Office of Enforcement*, 11 DOE 85,023 (1983) (refunds to States of Texas and Oklahoma for programs benefiting consumers of No. 2 fuel and other products), *and Standard Oil Company (Indiana)*, 11 DOE 85,185 (1983) (refunds to 49 states for programs benefiting motor gasoline and heating oil consumers). In other cases involving crude oil overcharges, the OHA has proposed that, due to the disbursement by the DOE regulatory program of the effects of the overcharges throughout the entire United States, refund money should be distributed to state governments, on the basis of their share in national petroleum products consumption, for use in projects benefiting energy consumers within the state. *See*, *e.g.*, *Office of Enforcement*: *In the Matter of Adams Resources and Energy, Inc.*, 9 DOE 82,553 (1982).

These indirect restitutionary distributions are based upon the DOE's authority to provide for restitution to injured parties of funds unlawfully obtained through violations of the DOE regulations. See Department of Energy Organization Act, Pub. L. 95-91, *and Bonray Oil Co. v. DOE*, 601 F. 2d 1191 (Temp. Emer. Ct. App. 1979). There are few reported Federal cases involving disposition of funds obtained through the government's settlement of a case prior to establishment of liability on the part of the defendant. Consequently, the OHA has drawn upon established equitable principles for these restitutionary distributions. For example, the equitable concept of *cy pres* in the common law of trusts provides that a court may designate the "next best" beneficiary of a trust, in keeping with the purpose for which the trust was established. 15 Am. Jur. 2d, Charities 158. An analogy may also be drawn to the legal principle of *parens patriae*, a concept of standing whereby state governments are permitted to "stand in the shoes" of their citizens for certain purposes. For example, in *West Virginia v. Pfizer*, 440 F 2d 1079 (2d Cir. 1971), states were allowed to recover on behalf of consumers within those states leftover funds obtained through settlement of an antitrust action against a drug company.

QUESTIONS FROM SENATOR BENNETT JOHNSTON

Question 6: What projections can you make about how fast DOE can process overcharge funds through the Subpart V proceedings?

Currently, you say that of the $484 million held in escrow at DOE, $460 million is tied up in Subpart V, so only $24 million is available to be put in the Petroleum Overcharge Restitution Fund if S. 2370 were to be enacted today. When you submitted the text of S. 2370 to Congress on February 29, 1984, for introduction, there were $26 million available. Why haven't you made any more progress in Subpart V?

Please provide the Committee with a list of the cases that are expected to provide more than $50 million in revenue for the Fund established under S. 2370. This list should include the amounts that are expected to become available to the Fund and an estimate of when these amounts will clear the process set forth in Section 2 of S. 2370.

Answer: As of June 8, 1984, the OHA had distributed approximately $35 million in principal for direct restitution. In October 1983, the ERA referred 453 cases for Subpart V proceedings. Proposed refund procedures have been published in approximately 220 of those cases, and refund applications for those and other cases that are now in analysis will be accepted throughout FY 1985. In particular, based upon past experience, the OHA may receive as many as 15,000 refund applications in FY 1985, due to an expected influx of large settlement amounts from major refiners such as Gulf Oil Company ($42 million) and Mobil Oil Corporation ($27 million). OHA expects to process 11,000 of these claims within one year, while issuing proposed and final refund procedures decisions for the remaining 233 cases referred to OHA in October 1983. Many of these 11,000 refund applications will be for small amounts and OHA is unable to forecast the amount of money that will be distributed to these claimants.

Since the proposed bill calls for adjudication of all claims from injured parties before any part of a particular escrow account may be deposited into the Petroleum Overcharge Restitution Fund (PORF) and since there are frequently hundreds or thousands of claimants in each case, it is impossible to estimate how soon the processing of any particular group of refund claims against an escrow fund will be completed. Consequently, we are unable at this time to determine which cases will contribute to the $50 million in revenue for the PORF and cannot provide the requested list.

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### Identification of Overcharges

Question 7: What efforts are made by DOE in the course of the Subpart V process to identify individual victims of oil overcharges and to determine the amount of the overcharge?

The Department has or had access to a substantial volume of data and records of oil refiners, producers and resellers covering the period of petroleum price controls. To what etent does DOE use these records or make these records available for use to determine who is overcharged and by how much?

Answer: During the course of Subpart V proceedings, the OHA examines the audit files for each enforcement proceeding underlying the Subpart V proceeding and provides direct mail notice of the opportunity to participate in the proceeding to all firms and individuals whose names and addresses appear in those files. In addition, the OHA provides direct mail notice where appropriate to national and regional trade associations representing consumers, resellers and retailers, to state governments and to any individual who has requested notice concerning a particular case. The DOE regulations also require publication of special refund procedures in the Federal Register and the agency issues press releases concerning specific refund procedures of significant interest to large numbers of customers.

As indicated above, the OHA has ready access to the data and records compiled by the Economic Regulatory Administration during their enforcement proceedings. In a number of cases, the ERA has identified allegedly overcharged customers and suggested refund amounts. In the majority of cases, however, the ERA's files do not contain such information. With respect to pertinent data held by the Energy Information Administration, the OHA is entitled to receive such material pursuant to the statutory requirement in the Department of Energy Organization Act that requires the EIA to provide the OHA with data necessary for its mission. 42 U.S.C. 205(a)(2)(f). Access to ERA and EIA records for public use is governed by the Freedom of Information Act, 5 U.S.C. 552 et seq.

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### Warner Amendment

Question 8a. Please provide the Committee with copies of the reports filed by each State describing the ways in which funds made available under the Warner Amendment (Section 155 of Public Law 97-377) were spent.

Answer: Attached are the letters from the governors of the states certifying each state's plan for the distribution of funds received under the Warner Amendment.

Question 8b: Include any internal memoranda analyzing these responses prepared since they were received and, in addition, provide the Committee with your views and comments on the strengths and weaknesses of this method of indirect restitution of oil overcharges.

Answer: Attached are copies of internal correspondence between the Office of the Solicitor and the Office of General Counsel concerning review of each state's plan.

The Warner Amendment provided for distribution of the overcharge amounts held in escrow by the Department of Energy, up to a total of $200 million, where direct restitution to individual injured persons was impossible or impracticable because such individuals could not reasonably be identified or because the amount of each such individual's injury was either not susceptible of quantification or too small to be capable of reasonable determination.

The strength of Section 155 was that it provided legislative direction as to the disposition of monies for which direct restitution was impossible. However, in the formula by which each jurisdiction's share was calculated, allocations were based on the sales of petroleum products, some of which were not subject to price controls during the period that produced the overcharges.

Question 8c: If the Committee were interested in supporting a "Warner Amendment" covering Fiscal Year 1985, how much money would be available currently for such a procedure? How much money can reasonably be expected to become available for such a procedure during Fiscal Year 1985?

Answer: Of the funds held by the government in deposit escrow accounts in the Treasury, $200 million were distributed to the states under the Warner Amendment. The remainder of these monies is presently subject to special refund procedures under 10 C.F.R. Section 205, Subpart V, which are conducted by the D.O.E.'s Office of Hearings and Appeals. It is anticipated that claims will be submitted against these funds by persons who believe they were injured by the activities of the firms who paid in the funds. It is difficult to anticipate the precise number, size, or merit of the claims which may be submitted. Therefore, any estimate of the money remaining after these Subpart V procedures are completed, if any, would be highly speculative. It would be even more difficult to speculate on the amounts which may become available for distribution during FY 1985, since they will be dependent upon recoveries pursuant to future settlements, the numbers, terms, and amounts of which all being subject to future negotiation or the ultimate outcome of adversarial litigation that might be finally resolved in FY 1985.

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### Legislative Changes

| | |
|---|---|
| Question 9: | Please provide the Committee with any changes you would recommend in the statutes mentioned in clauses (i) through (iii) of section 4 of S. 2370. |
| Answer: | The Weatherization Assistance Program's current legislation already allows for a large measure of flexibility sufficient to manage the program efficiently and effectively. For example, the January 27, 1984, rule encourages the Weatherization Assistance Program to be responsive to local needs and incorporates changes in technology. That will come about without changes in the legislation and we do not see a need for any changes at this time. |

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### Investigations

Question 10: What investigations (involving the Inspector General, the General Accounting Office, etc.) are currently underway looking into the programs through which funds would be disbursed under S. 2370? Who is conducting these investigations and what other Federal agencies are involved? What program activity locations are being investigated? What are the concerns and allegations underlying these investigations? When are the reports expected to be available from these efforts?

Answer: We are aware of two investigations that we believe are still currently underway. The General Accounting Office contacted us last fiscal year concerning a self-initiated review of DOE's grant programs. We have not seen any reports and do not know the status of the review or date of issuance. DOE's Inspector General's Office is finalizing a draft report on a self-initiated review of DOE grant program management and administration, but again we have not seen the draft report. We expect the DOE I.G. draft report to be sent to us for comment shortly. We are not aware of the involvement of any other agencies in these investigations. Since the investigations are both self-initiated we are not aware of any concerns brought about by any allegations.

Questions from Senator J. Bennett Johnston

Status of Overcharge Funds

Question 11: On page 3 of your prepared statement you say "The Department believes that indirect restitution resulting from overchargesshould, as a matter of policy, be subject to Congressional direction and processes. It is the Congress, rather than the courts, which should determine spending priorities for Federal programs." This statement seems to imply that overcharge funds are Federal funds. Is that your position? Please explain.

Answer: Overcharge funds are not owned by the Government, but are subject to governmental direction as to the manner of their distribution to accomplish restitution.

## Questions from Senator J. Bennett Johnston

### Restitution vs. Appropriations

Question 12a: In effect, what was to be restored to all overcharged consumers substitutes for money from the Treasury intended for assistance to some overcharged consumers. Instead of benefiting from the sum of both streams of money the amount received by consumers in the aggregate is capped at the FY 1984 appropriation for the three programs named in the bill, and only the consumers covered by those programs benefit.

This analysis makes S. 2370 look like a bad deal for consumers. Would you comment?

Answer: Through the Warner Amendment, Congress benefited recipients of energy assistance programs through petroleum overcharge funds. S. 2370 would perform the same restitutionary function. Since overcharged consumers are also taxpayers, S. 2370 is a good deal for consumers.

Question 12b: Put another way, how can you argue that S. 2370 is an indirect form of restitution when the bill limits the total amount of money that can be spent on the three programs to the same levels as appropriated in FY 1984 (not including the $200 million supplemental for LIEAP)? Isn't an increase necessary before one can say that restitution for oil overcharges in occurring?

Response on next page.

Question 12c: Isn't it reasonable to assume, given past Congressional support for these programs, that the levels of appropriations for these three programs will remain near $2 billion per year for the next five years even if S. 2370 is not enacted?

Answer 12b&c: The total amount which Congress authorizes and appropriates for the three programs is not relevant to the question of whether S. 2370 provides indirect restitution for oil overcharges. Money from the overcharge Fund is intended to supplant a portion of the amount collected from the taxpayers that is used to support the programs, regardless of the total amount appropriated. By reducing the amount of the taxpayers' money needed to support these programs and offsetting that money with overcharge collections, S. 2370 benefits consumers and taxpayers nationwide, who may have been affected by the overcharges, thus accomplishing indirect restitution.

Given the increasing importance of reducing Federal spending and deficits, we are not prepared to assume that Congress will continue to appropriate Funds for these programs at current levels; nor are we in a position to make assumptions of future congressional action.

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### Comparison with Existing Law

Question 13: Please provide the Committee with a description of the steps one goes through from beginning to end in the case of an overcharge, that is, from the first notice by DOE to an alleged violator through to final disposition of the matter. Show the administrative steps, the points at which judicial review may be sought, and the options available to the alleged violator, the Government, persons who believe they have been injured by the alleged violation, and other interested parties.

Compare this step-by-step process with the process that would obtain if S. 2370 were law. Discuss the differences and explain why the situation under S. 2370 is preferable.

Answer: The first notice from the D.O.E. to an alleged violator is generally a Notice of Probable Violation (NOPV) which states the results of the D.O.E. audit, the facts found, the relevant statutes and regulations, and the procedures for response. Once a response from the subject firm is received, it is evaluated along with any additional information or documentation which may be submitted by the firm. If, after this evaluation is made, a violation is determined to have occurred, the firm is served with a Proposed Remedial Order (PRO) setting forth relevant facts and law and discussing relevant authority. A PRO may be issued any time the ERA finds a violation has occurred even if no previous NOPV has issued.

The firm's response to a PRO is a Notice of Objections and a Statement of Objections, filed with the Office of Hearings and Appeals (OHA), the latter setting forth the firm's bases for the objections to the issuance of the PRO as a final order. Responses to Statements of Objections, replies, and motions for discovery, protective orders, evidentiary hearings, oral argument, etc., may be submitted to OHA.

After considering all information and argument received during the proceedings, OHA may issue a final Remedial Order, which is appealable to the Federal Energy Regulatory Commission (F.E.R.C.) Rulings of F.E.R.C. may be challenged in federal district court and adverse federal court decisions may be appealed to the Temporary Emergency Court of Appeals. The U.S. Supreme Court is, of course, the court of last resort.

If S. 2370 were law, this process would remain intact since the bill is concerned exclusively with remedies. If enacted, S. 2370 would statutorily require the use of procedures to obtain direct restitution, including Subpart V, and require that only residual funds be channelled to the stipulated federal programs. It would improve the current situation by removing this remedy issue in administrative litigation of purposed Remedial Orders before the Office of Hearnings and Appeals. It would also eliminate the need for OHA's second-stage proceeding under Subpart V.

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### State-by-State Comparison

Question 14a: Prepare a table showing a State-by-State breakdown and comparison of the total amount each State would receive under the following two cases:

(1) $2.1 billion distributed under S. 2370 assuming these funds are fully appropriated for all three programs listed in the bill; and

Answer: (1) The State-by-State allocations for FY 1984 for DOE's Weatherization Assistance Program and Institutional Conservation Program, and the Low-Income Home Energy Assistance Program administered by the Department of Health and Human Services are attached. The figures are based on current appropriation and total approximately $2.1 billion.

Attachments

## Weatherization Program Allocations

| STATE | TOTAL FUNDING |
|---|---|
| Alabama | 1,682,566 |
| Alaska | 1,057,234 |
| Arizona | 665,703 |
| Arkansas | 1,636,533 |
| California | 4,823,522 |
| Colorado | 3,741,650 |
| Connecticut | 2,663,417 |
| Delaware | 524,967 |
| Dist. of Col. | 675,420 |
| Florida | 613,084 |
| Georgia | 1,862,396 |
| Hawaii | 166,301 |
| Idaho | 1,558,410 |
| Illinois | 11,369,893 |
| Indiana | 5,365,139 |
| Iowa | 4,665,128 |
| Kansas | 1,961,056 |
| Kentucky | 3,731,937 |
| Louisiana | 801,249 |
| Maine | 2,985,488 |
| Maryland | 2,171,973 |
| Massachusetts | 5,719,601 |
| Michigan | 13,228,165 |
| Minnesota | 9,807,261 |
| Mississippi | 1,117,996 |
| Missouri | 5,733,969 |
| Montana | 2,054,609 |
| Nebraska | 2,453,186 |
| Nevada | 473,644 |
| New Hampshire | 1,434,064 |
| New Jersey | 4,956,261 |
| New Mexico | 1,461,376 |
| New York | 19,544,281 |
| North Carolina | 3,168,816 |
| North Dakota | 2,257,839 |
| Ohio | 10,940,082 |
| Oklahoma | 1,944,609 |
| Oregon | 2,231,818 |
| Pennsylvania | 13,412,987 |
| Rhode Island | 1,154,665 |
| South Carolina | 1,050,754 |
| South Dakota | 1,961,531 |
| Tennessee | 3,287,824 |
| Texas | 2,576,061 |
| Utah | 1,664,737 |
| Vermont | 1,419,642 |
| Virginia | 2,992,059 |
| Washington | 3,445,692 |
| West Virginia | 2,620,703 |
| Wisconsin | 7,292,319 |
| Wyoming | 870,355 |
| TOTAL | 187,000,000 |

## GRANT PROGRAM CYCLE VI ALLOCATIONS
## INSTITUTIONAL CONSERVATION PROGRAM

| STATE | CYCLE VI ALLOCATION |
|---|---|
| Alabama | $ 685,534 |
| Alaska | 294,231 |
| American Samoa | 184,400 |
| Arizona | 557,617 |
| Arkansas | 491,884 |
| California | 2,439,656 |
| Colorado | 762,522 |
| Connecticut | 769,731 |
| Delaware | 264,735 |
| District of Columbia | 271,660 |
| Florida | 1,283,186 |
| Georgia | 864,979 |
| Guam | 195,867 |
| Hawaii | 275,858 |
| Idaho | 357,910 |
| Illinois | 2,428,311 |
| Indiana | 1,197,969 |
| Iowa | 802,205 |
| Kansas | 595,555 |
| Kentucky | 757,505 |
| Louisiana | 676,183 |
| Maine | 451,216 |
| Maryland | 854,330 |
| Massachusetts | 1,277,929 |
| Michigan | 2,088,094 |
| Minnesota | 1,226,196 |
| Mississippi | 501,618 |
| Missouri | 1,053,613 |
| Montana | 350,536 |
| Nebraska | 495,136 |
| Nevada | 312,711 |
| New Hampshire | 392,844 |
| New Jersey | 1,467,309 |
| New Mexico | 367,998 |
| New York | 3,441,262 |
| North Carolina | 968,741 |
| North Dakota | 345,702 |
| Ohio | 2,175,937 |
| Oklahoma | 631,301 |
| Oregon | 559,392 |
| Pennsylvania | 2,333,708 |
| Puerto Rico | 614,484 |
| Rhode Island | 358,956 |
| South Carolina | 567,471 |
| South Dakota | 328,078 |
| Tennessee | 850,382 |
| Texas | 2,044,410 |
| Utah | 459,723 |
| Vermont | 307,367 |
| Virgin Islands | 187,814 |
| Virginia | 978,697 |
| Washington | 844,398 |
| West Virginia | 492,655 |
| Wisconsin | 1,240,754 |
| Wyoming | 271,740 |
| TOTAL | $47,000,000 |

## FY 1984 Final State Allotments for LIHEAP dated June 15, 1984

| | Total Allotment at $1.875B | Indian Set-Aside at $1.875B | Net Allotment at $1.875B | Total Allotment at $200M | Indian Set-Aside at $200M | Net Allotment at $200M | Total Allotment at $2.075B | Indian Set-Aside at $2.075B | Net Allotment at $2.075B |
|---|---|---|---|---|---|---|---|---|---|
| Alabama | $ 16,084,285 | $ 69,178 | $ 16,015,107 | $1,717,760 | $ 7,388 | $1,710,372 | $ 17,802,045 | $ 76,566 | $ 17,725,479 |
| Alaska | 10,266,959 | 3,945,283 | 6,321,676 | 1,096,485 | 383,770 | 712,715 | 11,363,444 | 4,329,053 | 7,034,391 |
| Arizona | 7,778,551 | 729,729 | 7,048,822 | 830,729 | 77,934 | 752,795 | 8,609,280 | 807,663 | 7,801,617 |
| Arkansas | 12,273,070 | -0- | 12,273,070 | 1,310,732 | -0- | 1,310,732 | 13,583,802 | -0- | 13,583,802 |
| California | 86,287,505 | 269,561 | 86,017,944 | 9,215,285 | 28,789 | 9,186,496 | 95,502,790 | 298,350 | 95,204,440 |
| Colorado | 30,085,764 | -0- | 30,085,764 | 3,213,083 | -0- | 3,213,083 | 33,298,847 | -0- | 33,298,847 |
| Connecticut | 39,247,940 | -0- | 39,247,940 | 4,191,580 | -0- | 4,191,580 | 43,439,520 | -0- | 43,439,520 |
| Delaware | 5,209,408 | -0- | 5,209,408 | 556,352 | -0- | 556,352 | 5,765,760 | -0- | 5,765,760 |
| D. C. | 6,095,269 | -0- | 6,095,269 | 650,959 | -0- | 650,959 | 6,746,228 | -0- | 6,746,228 |
| Florida | 25,450,141 | 4,836 | 25,445,305 | 2,718,010 | 516 | 2,717,494 | 28,168,151 | 5,352 | 28,162,799 |
| Georgia | 20,122,239 | -0- | 20,122,239 | 2,149,004 | -0- | 2,149,004 | 22,271,243 | -0- | 22,271,243 |
| Hawaii | 2,026,420 | -0- | 2,026,420 | 216,416 | -0- | 216,416 | 2,242,836 | -0- | 2,242,836 |
| Idaho | 11,735,452 | 100,561 | 11,634,891 | 1,253,316 | 10,740 | 1,242,576 | 12,988,768 | 111,301 | 12,877,467 |
| Illinois | 108,631,522 | -0- | 108,631,522 | 11,601,569 | -0- | 11,601,569 | 120,233,091 | -0- | 120,233,091 |
| Indiana | 49,185,301 | -0- | 49,185,301 | 5,252,864 | -0- | 5,252,864 | 54,438,165 | -0- | 54,438,165 |
| Iowa | 34,858,282 | -0- | 34,858,282 | 3,722,775 | -0- | 3,722,775 | 38,581,057 | -0- | 38,581,057 |
| Kansas | 16,008,487 | 14,475 | 15,994,012 | 1,709,665 | -0- | 1,709,665 | 17,718,152 | 14,475 | 17,703,677 |
| Kentucky | 25,595,865 | -0- | 25,595,865 | 2,733,573 | -0- | 2,733,573 | 28,329,438 | -0- | 28,329,438 |
| Louisiana | 16,443,712 | 30,635 | 16,413,077 | 1,756,146 | 3,272 | 1,752,874 | 18,199,858 | 33,907 | 18,165,951 |
| Maine | 25,426,409 | 215,284 | 25,211,125 | 2,715,475 | 21,995 | 2,693,480 | 28,141,884 | 237,279 | 27,904,605 |
| Maryland | 30,051,652 | -0- | 30,051,652 | 3,209,440 | -0- | 3,209,440 | 33,261,092 | -0- | 33,261,092 |
| Massachusetts | 78,508,878 | 14,446 | 78,494,432 | 8,384,548 | 1,543 | 8,383,005 | 86,893,426 | 15,989 | 86,877,437 |
| Michigan | 103,136,109 | 63,120 | 103,072,989 | 11,014,673 | 6,742 | 11,007,931 | 114,150,782 | 69,862 | 114,080,920 |
| Minnesota | 74,303,731 | -0- | 74,303,731 | 7,935,449 | -0- | 7,935,449 | 82,239,180 | -0- | 82,239,180 |
| Mississippi | 13,789,776 | 14,976 | 13,774,800 | 1,472,713 | 1,599 | 1,471,114 | 15,262,489 | 16,575 | 15,245,914 |
| Missouri | 43,391,671 | -0- | 43,391,671 | 4,634,120 | -0- | 4,634,120 | 48,025,791 | -0- | 48,025,791 |
| Montana | 13,764,940 | 2,653,880 | 11,111,060 | 1,470,060 | 283,429 | 1,186,631 | 15,235,000 | 2,937,309 | 12,297,691 |
| Nebraska | 17,238,758 | 7,964 | 17,230,794 | 1,841,055 | 851 | 1,840,204 | 19,079,813 | 8,815 | 19,070,998 |
| Nevada | 3,653,354 | 7,095 | 3,646,259 | 390,169 | 758 | 389,411 | 4,043,523 | 7,853 | 4,035,670 |
| New Hampshire | 14,860,129 | -0- | 14,860,129 | 1,587,024 | -0- | 1,587,024 | 16,447,153 | -0- | 16,447,153 |
| New Jersey | 72,883,283 | 93,874 | 72,789,409 | 7,783,748 | 10,025 | 7,773,723 | 80,667,031 | 103,899 | 80,563,132 |
| New Mexico | 9,738,207 | 809,329 | 8,928,878 | 1,040,016 | 86,434 | 953,582 | 10,778,223 | 895,763 | 9,882,460 |
| New York | 237,974,967 | 89,717 | 237,885,250 | 25,415,118 | 9,581 | 25,405,537 | 263,390,085 | 99,298 | 263,290,787 |
| North Carolina | 35,465,488 | -0- | 35,465,488 | 3,787,624 | -0- | 3,787,624 | 39,253,112 | -0- | 39,253,112 |
| North Dakota | 14,952,889 | 1,832,508 | 13,120,381 | 1,596,930 | 187,000 | 1,409,930 | 16,549,819 | 2,019,508 | 14,530,311 |
| Ohio | 96,100,818 | -0- | 96,100,818 | 10,263,322 | -0- | 10,263,322 | 106,364,140 | -0- | 106,364,140 |
| Oklahoma | 14,784,761 | 729,729 | 14,055,032 | 1,578,975 | 77,934 | 1,501,041 | 16,363,736 | 807,663 | 15,556,073 |
| Oregon | 23,317,738 | -0- | 23,317,738 | 2,490,275 | -0- | 2,490,275 | 25,808,013 | -0- | 25,808,013 |
| Pennsylvania | 127,827,654 | -0- | 127,827,654 | 13,651,667 | -0- | 13,651,667 | 141,479,321 | -0- | 141,479,321 |
| Rhode Island | 12,923,009 | 74,721 | 12,848,288 | 1,380,144 | 7,980 | 1,372,164 | 14,303,153 | 82,701 | 14,220,452 |
| South Carolina | 12,774,200 | -0- | 12,774,200 | 1,364,252 | -0- | 1,364,252 | 14,138,452 | -0- | 14,138,452 |
| South Dakota | 12,144,365 | 2,054,221 | 10,090,144 | 1,296,987 | 219,387 | 1,077,600 | 13,441,352 | 2,273,608 | 11,167,744 |
| Tennessee | 25,928,063 | -0- | 25,928,063 | 2,769,051 | -0- | 2,769,051 | 28,697,114 | -0- | 28,697,114 |
| Texas | 42,340,543 | -0- | 42,340,543 | 4,521,862 | -0- | 4,521,862 | 46,862,405 | -0- | 46,862,405 |
| Utah | 13,980,925 | 584,832 | 13,396,093 | 1,493,127 | 62,459 | 1,430,668 | 15,474,052 | 647,291 | 14,826,761 |
| Vermont | 11,138,196 | -0- | 11,138,196 | 1,189,531 | -0- | 1,189,531 | 12,327,727 | -0- | 12,327,727 |
| Virginia | 36,606,272 | -0- | 36,606,272 | 3,909,456 | -0- | 3,909,456 | 40,515,728 | -0- | 40,515,728 |
| Washington | 38,354,468 | 1,448,494 | 36,905,974 | 4,096,159 | 154,696 | 3,941,463 | 42,450,627 | 1,603,190 | 40,847,437 |
| West Virginia | 16,938,727 | -0- | 16,938,727 | 1,809,013 | -0- | 1,809,013 | 18,747,740 | -0- | 18,747,740 |
| Wisconsin | 66,884,027 | -0- | 66,884,027 | 7,143,043 | -0- | 7,143,043 | 74,027,070 | -0- | 74,027,070 |
| Wyoming | 5,597,655 | -0- | 5,597,655 | 597,815 | -0- | 597,815 | 6,195,470 | -0- | 6,195,470 |
| | 1,870,167,834 | 15,858,448 | 1,854,309,386 | 199,729,144 | 1,644,822 | 198,084,322 | 2,069,896,978 | 17,503,270 | 2,052,393,708 |
| Am. Samoa | 40,409 | -0- | 40,409 | 4,316 | -0- | 4,316 | 44,725 | -0- | 44,725 |
| Guam | 88,596 | -0- | 88,596 | 9,462 | -0- | 9,462 | 98,058 | -0- | 98,058 |
| TTPI | 93,415 | -0- | 93,415 | 9,976 | -0- | 9,976 | 103,391 | -0- | 103,391 |
| CNMI | 30,772 | -0- | 30,772 | 3,286 | -0- | 3,286 | 34,058 | -0- | 34,058 |
| Virgin Islands | 83,778 | -0- | 83,778 | 8,947 | -0- | 8,947 | 92,725 | -0- | 92,725 |
| Puerto Rico | 2,199,196 | -0- | 2,199,196 | 234,869 | -0- | 234,869 | 2,434,065 | -0- | 2,434,065 |
| | $2,536,166 | -0- | $2,536,166 | $270,856 | -0- | $270,856 | $2,807,022 | -0- | $2,807,022 |

## QUESTIONS FROM SENATOR J. BENNETT JOHNSTON

### State-by-State Comparison

Question 14b: Prepare a table showing State-by-State breakdown and comparison of the total amount each State would receive under the following case:

> $2.1 billion from judicial judgments in which the court has directed distribution to States in accordance with the provisions of the Warner Amendment (as has occurred in the Exxon Hawkins Field case).

Answer: The following table shows the distribution by state of a hypothetical $2.1 billion fund and assumes the use of the state-by-state allocation, as corrected for certain mathematical discrepancies, used under the Warner Amendment. Allocation of the funds among the five programs set out in the Warner Amendment was left to each states discretion.

| STATE | PERCENTAGE SHARE | DOLLAR SHARE |
|---|---|---|
| Alaska | .003983 | 8,364,300 |
| Alabama | .014832 | 31,147,200 |
| Arkansas | .010772 | 22,621,200 |
| Arizona | .009913 | 20,817,300 |
| California | .094668 | 198,802,800 |
| Colorado | .010326 | 21,684,600 |
| Connecticut | .016479 | 34,605,900 |
| Dist. of Columbia | .002332 | 4,897,200 |
| Delaware | .004569 | 9,594,900 |
| Florida | .045576 | 95,709,600 |
| Georgia | .021514 | 45,179,400 |
| Hawaii | .006912 | 14,515,200 |
| Iowa | .012338 | 25,909,800 |
| Idaho | .003941 | 8,276,100 |
| Illinois | .045221 | 94,964,100 |
| Indiana | .023643 | 49,650,300 |
| Kansas | .010553 | 22,161,300 |
| Kentucky | .012864 | 27,014,400 |
| Louisiana | .029721 | 62,414,100 |
| Massachusetts | .033413 | 70,167,300 |
| Maryland | .017905 | 37,600,500 |
| Maine | .007260 | 15,246,000 |
| Michigan | .032848 | 68,980,800 |
| Minnesota | .016432 | 34,507,200 |
| Missouri | .018678 | 39,223,800 |
| Mississippi | .011908 | 25,006,800 |
| Montana | .004344 | 9,122,400 |
| Nebraska | .006894 | 14,477,400 |
| North Carolina | .021575 | 45,307,500 |
| North Dakota | .003491 | 7,331,100 |
| New Hampshire | .004456 | 9,357,600 |
| New Jersey | .037516 | 78,783,600 |
| New Mexico | .005977 | 12,551,700 |
| Nevada | .003871 | 8,129,100 |
| New York | .076895 | 161,479,500 |
| Ohio | .035621 | 74,804,100 |
| Oklahoma | .011838 | 24,859,800 |
| Oregon | .009821 | 20,624,100 |
| Pennsylvania | .045877 | 96,341,700 |
| Rhode Island | .003836 | 8,055,600 |
| South Carolina | .011695 | 24,559,500 |
| South Dakota | .003344 | 7,022,400 |
| Tennessee | .015873 | 33,333,300 |
| Texas | .085456 | 179,457,600 |
| Utah | .005620 | 11,802,000 |
| Virginia | .025402 | 53,344,200 |
| Vermont | .002290 | 4,809,000 |
| Washington | .015595 | 32,749,500 |
| Wisconsin | .016722 | 35,116,200 |
| West Virginia | .005850 | 12,285,000 |
| Wyoming | .003920 | 8,232,000 |
| Puerto Rico | .010127 | 21,266,700 |
| Virgin Islands | .005966 | 12,528,600 |
| Guam | .001275 | 2,677,500 |
| American Samoa | .000166 | 348,600 |
| No. Marianas | .000086 | 180,600 |
| Total | 1.000000 | 2,100,000,000 |

# Questions from Senator J. Bennett Johnston

for William Patrick Collins, Under Secretary of Energy

Hearing on S. 2370, the Petroleum Overcharge Restitution Act, and the Federal Weatherization Program

Committee on Energy and Natural Resources
U.S. Senate

June 14, 1984

## 1. Appropriations

If S. 2370 does not pass this year, will you support appropriations for each of the three programs mentioned in the bill?

If so, at what level for each program?

If not, why not? Aren't these programs good programs?

Won't we need FY 1985 appropriations in any event to cover the levels for these programs in the President's budget? In FY 1985, how much overcharge money do you estimate will clear the portion of the Subpart V process designed to make restitution to individual consumers who can prove they were overcharged? How much do you estimate will become available from court cases? Which cases? How much of the money from these cases will still be subject to a Subpart V proceeding?

When do you expect as much as $2 billion to be available from sources that, under S. 2370, would feed into the fund?

Do you intend that S. 2370 authorize $2.075 billion per year for the Low Income Energy Assistance Program (LIEAP), which was the amount appropriated in FY 1984 including the supplemental, or only $1.875 billion, which is the amount in Public Law 98-139?

## 2. Legal Analysis

In the "Hawkins Field" Exxon case, now on appeal, a Federal court ordered Exxon to pay to the States $1.7 billion to be distributed in the same manner as provided in the "Warner Amendment" (section 155 of Public Law 97-377).

If S. 2370 is enacted, would it supercede this court's decision and place the $1.7 billion in the Petroleum Restitution Overcharge Fund without the use of a Subpart V proceeding? What is the legal basis for the Congress inserting itself in ongoing litigation involving restitution to injured parties and imposing its judgment on the Courts as to what is an appropriate restitution?

What is the legal basis for in effect declaring in the statute that all $1.7 billion in the Exxon case is in fact an overcharge? Has Exxon appealed the assessment of the overcharge?

Wouldn't it be prudent for Congress to wait until there has been a final court judgement as to what the actual magnitude of the overcharge is before implementing restitutionary procedures?

The literal language of section 2(a) of S. 2370 brings under the provisions of this bill all petroleum overcharge funds "held" in escrow accounts on the date of enactment regardless of who holds the escrow funds. Therefore, in all pending cases on the date of enactment where courts hold funds in escrow, these funds would be swept into this bill. Is that intended?

The subsection also indicates that after the date of enactment all escrow funds "received" are covered. Received by whom?

Are there no constitutional issues here? Please provide a legal analysis of the issues described above and any other constitutional issues you consider significant.

3. Restitution

Please explain how you define "restitution" and the modified versions of this concept that you spoke of in the hearing, "direct" and "indirect" restitution.

It appears that most of the programs you are using to make restitution base their allocation formula on consumption for residential heating in each State. Why were these particular programs selected?

How much oil consumption goes into residential heating? Isn't that a highly regional consumption?

The $1.7 billion in the Exxon case to be distributed to States is distributed under the Warner Amendment, which allocates the money pro rata based solely on the relative consumption of all refined petroleum products in each State. If this bill passes, you will take that $1.7 billion and instead allocate it to States based on formulas geared heavily toward residential heating.

How do you justify this theory of restitution? Isn't total petroleum consumption a better way to allocate money due to petroleum overcharges than residential heating costs?

Have you given any consideration to making restitution to small businesses who are end-use consumers? Why or why not?

What is the justification for making restitution for oil overcharges to someone who consumes only electricity, gas, coal or wood?

Why should restitution to low-income people be targeted to heating? Don't low-income people have to pay significant amounts for cooling too? How does your bill divide up restitution between heating costs and cooling costs in allocating funds among the States?

How much oil is used in transportation? Do any of your ideas about restitution involve restitution to the transportation sector?

Do you always make restitution to end-use consumers only? Why not to classes of firms - such as refiners or marketers - that had to absorb overcharges because they couldn't pass them on? Throughout the period of price controls such firms accumulated huge "banked costs" representing crude oil and refined product costs that were never passed through to consumers.

Has any court awarded restitution to these kinds of firms?

4. Rebuttal

Please provide the Committee with a response to the "Analysis of the Proposed 'Petroleum Overcharge Restitution Fund' (S. 2370 and H.R. 4672)" prepared by the Institute for Public Representation and the National Consumer Law Center and submitted to the Committee at the Hearing on June 14. A copy is attached.

5. Office of Hearings and Appeals Restitutionary Procedure

In what situations will DOE not use the Subpart V proceedings for overcharge monies under this legislation?

Please provide a full description of the process used by the Office of Hearings and Appeals to distribute overcharge money that has not been claimed through the Subpart V procedures designed to determine the amount of refund that is properly due to a claimant who is seeking direct restitution for economic injury.

What is the statutory authority for this particular procedure? What precedents are relied on in fashioning this procedure?

6. Schedule of Overcharge Fund Availability

What projections can you make about how fast DOE can process overcharge funds through the Subpart V proceeding?

Currently, you say that of the $484 million held in escrow at DOE, $460 million is tied up in Subpart V, so only $24 million is available to be put in the Petroleum Overcharge Restitution Fund if S. 2370 were to be enacted today. When you submitted the text of S. 2370 to Congress on February 29, 1984, for introduction, there were $26 million available. Why haven't you made any more progress in Subpart V?

Please provide the Committee with a list of the cases that are expected to produce more than $50 million in revenue for the Fund established under S. 2370. This list should include the amounts that are expected to become available to the Fund and an estimate of when these amounts will clear the process set forth in section 2 of S. 2370.

7. Identification of Overcharges

What efforts are made by DOE in the course of the Subpart V process to identify individual victims of oil overcharges and to determine the amount of the overcharge?

The Department has or had access to a substantial volume of data and records of oil refiners, producers and resellers covering the period of petroleum price controls. To what extent does DOE use these records or make these records available for use to determine who is overcharged and by how much?

8. Warner Amendment

Please provide the Committee with copies of the reports filed by each State describing the ways in which funds made available under the Warner Amendment (section 155 of Public Law 97-377) were spent.

Include any internal memoranda analyzing these responses prepared since they were received and, in addition, provide the Committee with your views and comments on the strengths and weaknesses of this method of indirect restitution of oil overcharges.

If the Committee were interested in supporting a "Warner Amendment" covering Fiscal Year 1985, how much money would be available currently for such a procedure? How much money can reasonably be expected to become available for such a procedure during Fiscal Year 1985?

9. Legislative Changes

Please provide the Committee with any changes you would recommend in the statutes mentioned in clauses (i) through (iii) of section 4 of S. 2370.

10. Investigations

What investigations (involving the Inspector General, the General Accounting Office, etc.) are currently under way looking into the programs through which funds would be disbursed under S. 2370?

Who is conducting these investigations and what other Federal agencies are involved? What program activity locations are being investigated?

What are the concerns and allegations underlying these investigations? When are reports expected to be available from these efforts?

11. Status of Overcharge Funds

On page 3 of your prepared statement you say "The Department believes that indirect restitution resulting from overcharges should, as a matter of policy, be subject to Congressional direction and processes. It is the Congress, rather than the courts, which should determine spending priorities for Federal programs."

This statement seems to imply that overcharge funds are Federal funds. Is that your position? Please explain.

12. Restitution vs. Appropriations

Some opponents of S. 2370 argue that the bill in effect converts overcharges into Treasury receipts, thereby eliminating restitution of the overcharges and minimizing the number of dollars brought to bear by the Federal government on the problems caused by high energy prices. The reasoning goes like this:

Absent S. 2370, two in principle quite different processes operate. DOE must make restitution of overcharge funds held in trust for petroleum consumers that cannot be readily identified. In an entirely separate role, DOE administers funds appropriated from the Treasury for Low-Income Energy Assistance, Low-Income Weatherization, and Schools and Hospitals Weatherization. Thus, two distinct Federal efforts benefit consumers burdened by high energy costs.

Under S. 2370 these two distinct efforts are merged. Restitutionary funds are substituted for some or all of the appropriated Treasury funds to support the three programs at the level of the FY 1984 appropriations for these programs. Consumers burdened by higher energy costs have the benefit of only one Federal effort and, therefore receive less assistance (fewer dollars) than they would otherwise receive.

In effect, what was to be restored to all overcharged consumers substitutes for money from the Treasury intended for assistance to some overcharged consumers. Instead of benefiting from the sum of both streams of money the amount received by consumers in the aggregate is capped at the FY 1984 appropriation for the three programs named in the bill, and only the consumers covered by those programs benefit.

This analysis makes S. 2370 look like a bad deal for consumers. Would you comment?

Put another way, how can you argue that S. 2370 is an indirect form of restitution when the bill limits the total amount of money that can be spent on the three programs to the same levels as appropriated in FY 1984 (not including the $200 million supplemental for LIEAP)? Isn't an increase necessary before one can say that restitution for oil overcharges is occurring?

Isn't it reasonable to assume, given past Congressional support for these programs, that the levels of appropriations for these three programs will remain near $2 billion per year for the next 5 years even if S. 2370 is not enacted?

13. Comparison with Existing Law

Please provide the Committee with a description of the steps one goes through from beginning to end in the case of an overcharge, that is, from the first notice by DOE to an alleged violator through to final disposition of the matter. Show the administrative steps, the points at which judicial review may be sought, and the options available to the alleged violator, the Government, persons who believe they have been injured by the alleged violation, and other interested parties.

Compare this step-by-step process with the process that would obtain if S. 2370 were law. Discuss the differences and explain why the situation under S. 2370 is preferable.

14. State-by State Comparison

Prepare a table showing a State-by-State breakdown and comparison of the total amount each State would receive under the following two cases:

(1) $2.1 billion distributed under S. 2370 assuming these funds are fully appropriated for all three programs listed in the bill; and

(2) $2.1 billion from judicial judgments in which the court has directed distribution to States in accordance with the provisions of the Warner Amendment (as has occurred in the Exxon Hawkins Field case).

STATE OF ALABAMA
GOVERNOR'S OFFICE
MONTGOMERY 36130

GEORGE C WALLACE
GOVERNOR

December 14, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulator Administration
Department of Energy
Washington, D. C. 20585

Dear Mr. Hanzlik:

Pursuant to the requirements of the Further Continuing Appropiations Act of 1983, I am reporting that the following programs have been or will be funded by Section 155 of the Act.

| | |
|---|---|
| Low-Income Home Energy Assistance | $1,600,000 |
| State Energy Conservation Plan | 1,038,400 |
| Energy Extension Service | 325,000 |
| | $2,963,400 |

I certify that the funds have been or will be used as if received under the Energy Conservation programs listed above. The Energy Division of the Department of Economic and Community Affairs (formerly the Alabama Department of Energy) is the designated agency responsible for the funds and will report expenditures to you as a part of normal financial status reports.

Should you have any questions concerning this matter please contact Fred O. Braswell, Energy Division Chief, at (205)284-8952.

Wishing you and your family a happy holiday season, I am

Sincerely yours,

George C. Wallace

George C. Wallace

GCW:aea

[illegible]

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

*OFFICE OF THE COMMISSIONER*

BILL SHEFFIELD, GOVERNOR

☒ POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

☐ 225 CORDOVA STREET · BLDG B
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

February 14, 1984

Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
1000 Independence Avenue S.W.
Washington, D.C. 20585

Dear Mr. Hanzlik:

RE: WARNER FUNDS

In compliance with 10 CFR Ch. 11 Part 205, on behalf of Governor Sheffield I wish to notify you that the State of Alaska will apply the $795,000 it has received in Petroleum Violation Escrow Funds to the Energy Extension Service program.

The activities that will be undertaken with these funds will be identified in the FY 84 Energy Extension Service plan and application that will be submitted by June 30, 1984.

Sincerely,

Emil Notti
Commissioner

STATE OF ARKANSAS
OFFICE OF THE GOVERNOR
*State Capitol*
*Little Rock 72201*

Bill Clinton
*Governor*

January 23, 1984

Administrator
Economic Regulatory Administration
Department of Energy
Washington, D. C. 20585

Dear Sir:

On February 4, 1983, the State of Arkansas received $2,152,200 in oil overcharge funds distributed by your agency pursuant to the Further Continuing Appropriations Act of 1983. As of December 31, 1983, the accumulated interest totaled approximately $126,000. This report will, therefore, cover a total of $2,278,200 in expenditures or commitments.

1. $664,285 - was distributed through the Arkansas Energy Office administered Institutional Conservation Program (ICP) during Cycle V.

2. $120,000 - was obligated through the Arkansas Energy Office administered Energy Extension Service Program (EES) for a contract with the Arkansas Educational Television Network (AETN) to produce and air a series of energy conservation TV specials.

3. $200,000 - has been committed through the Arkansas Energy Office administered State Energy Conservation Plan (SECP) for a contract with the Arkansas Public Service Commission which will develop and administer a residential conservation loan program through the state's electric utility companies.

4. $ 40,000 - has been committed through the Arkansas Energy Office administered SECP for a series of solar workshops, the development of some energy conservation public service announcements, and the development of an energy conservation curriculum for high school agriculture classes.

5. $ 68,000 - was obligated through the Arkansas Energy Office administered SECP for expanding the existing State Buildings Program, which performs energy audits on state buildings.

6. $ 86,000 - has been committed through the Arkansas Energy Office administered SECP for demonstration projects. Specific proposals for demonstration projects are being prepared for U.S.D.O.E. approval prior to implementation.

7. $610,000 - has been committed to the Arkansas Department of Human Services for their Weatherization Assistance Program (WAP).

---

$ 1,788,285 Sub-Total

$ 489,915 - will be divided between the following:

8. $ ? - would be channeled through the Arkansas Energy Office administered SECP to the Arkansas Housing Development Agency to reduce the interest on loans for energy conservation projects.

9. $ ? - would be distributed through Cycle VI of the Institutional Conservation Program.

---

$ 2,278,200 - Total expenditure/commitments

If you should have any questions concerning this report, please contact Cherry Duckett (501/371-1370) at the Arkansas Energy Office, #1 State Capitol Mall, Little Rock, Arkansas 72201.

Sincerely,

Bill Clinton

BILL CLINTON
Governor

cc: Cherry Duckett, Director

BC/bn/aeo/cd/gs

## ARIZONA'S PLAN FOR

## UTILIZATION OF OIL OVERCHARGE FUNDS

1. Low-income Energy Assistance Program (LIEAP)

   For crisis intervention, utility bill assistance. . . . . . . . . . . . . . . . .$ 835,000

2. Weatherization of Low-income Residences (WAP or SECP)

   To augment existing housing improvement for the income-eligible. . . . . . . . 250,000

3. Utility Rate Improvement Projects (PENDING APPROVAL)

   Grants to Corporation Commission and/or Residential Utility Consumer Office to establish "life-line" rates; analyze new "conservation" rates which may or may not assist low-income; for publication of Layman's Guide to Rate Structures and Intervention. . . . . 80,000

4. Solar Technology Development (EES)

   To accelerate development of low-cost solar cooling techniques and evaluation and information dissemination regarding cost-effective use of photovoltaics and other building techniques taking advantage of solar insolation. . . . . . . . . . . . . . . . . . . . . . 110,000

5. Institutional Conservation Program (ICP)

   As most elementary and secondary schools have been unable to participate in Federal Matching Grants program, this project would fund baseline energy audits of their buildings and provide guidance on low-cost conservation measures and techniques of avoiding ratchet rate penalties. . . . . . . . . . . . . . . . . . . . . . . 106,000

6. Academic Energy Demonstration Projects (SECP or EES)

   To fund grants capitalizing on diverse backgrounds and capabilities of Arizona's university faculties, science teachers and other school personnel; funding Arizona-specific programs to improve the State's energy future through energy-efficiency and the use of alternatives. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 225,000

7. Arizona Energy Data System (SECP)

   To continue maintenance of supply and demand data base created at University of Arizona in support of energy work throughout the State. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 30,000

## ARIZONA'S PLAN FOR

## UTILIZATION OF OIL OVERCHARGE FUNDS

8. Local Government/Non-profit Institutional Grants (SECP or EES)

   To assist communities with local initiatives for low-income programs, technical demonstrations, subdivision planning projects, energy audits and similar projects tailored to community needs. . . . . . . . .$ 275,000

9. State Buildings Energy Engineer (SECP)

   To provide Department of Administration with personnel and equipment to improve energy efficiency of State buildings and design means of retrofitting existing building stock with new technologies. . . . . . . . . . . . . . . . . . . . . . . . . . . 55,000

~~STATE OF~~ CALIFORNIA
GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR
SACRAMENTO, CA 95814-4998

DEC 30 1983

Rayburn Hanzlik, Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

USE OF PETROLEUM VIOLATION ESCROW FUND

In response to your letter of November 23, 1983, and in compliance with Section 155 of the Further Continuing Appropriations Act of 1983 the following report is submitted.

Pursuant to the distribution of Petroleum Violation Funds made under Section 155 of the Further Continuing Appropriations Act of 1983 California received $18,914,000. These funds were appropriated in the annual State budget to be used as follows:

| | | |
|---|---|---|
| 1. | Low Income Weatherization as provided for in Part A of the Energy Conservation and Existing Buildings Act of 1946 (42 U.S.C. 6861 and following). | $2,000,000 |
| 2. | Energy Crisis Intervention Program as provided for in the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 and following). | 4,000,000 |
| 3. | Energy Extension Service as provided for in the National Energy Extension Service Act (42 U.S.C. 7001 and following). | 964,000 |
| 4. | Schools and Hospitals as provided for under part G of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6371 and following). | 3,511,000 |

84 JAN 9 P1:01

5. State Energy Conservation Program (SECP) 8,439,000
   as provided for under Part D of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 and following). Of the amount appropriated for use under the SECP, $2,889,000 was budgeted for capital improvements. We are aware that before this money can be spent for this purpose changes in federal regulations must be obtained. If federal regulations are not changed by February 1984 the money will be reallocated to be used for approved purposes. If that becomes necessary this report will be amended.

If you have any questions on this matter, please contact Tom Dithridge Principal Program Budget Analyst, at 916 445-5332.

Very truly yours

Michael Franchetti
MICHAEL FRANCHETTI
Director of Finance

C:3278A/1551K

STATE OF COLORADO

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471

Richard D. Lamm
Governor

November 2, 1983

The Honorable Donald Hodel
Secretary of Energy
Forrestal Building
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Secretary Hodel:

I have enclosed a copy of my Executive Order distributing the Warner Amendment Funds allocated to Colorado. My decision was to distribute the funds in the following manner:

| | |
|---|---|
| $ 265,000 | for the programs under the National Energy Extension Service Act; |
| $ 62,000 | for the purposes of the Energy Policy and Conservation Act, to be used for a commercial program that will provide assistance to small and medium-sized businesses; |
| $ 125,000 | for purposes of the Energy Policy and Conservation Act, to be used to fund a series of television programs on home conservation and solar energy; |
| $1,000,000 | under the Low-Income Energy Assistance Act to be used to conduct a Low-Cost Weatherization Program; and, |
| $ 611,200 | for the Energy Conservation in Existing Buildings ct to be used to conduct a weatherization program for the low-income. |

If you have any further questions, please contact Tom Strickland of my staff.

Sincerely,

Richard D. Lamm
Governor

Attachment

NOV 9 1983

D0011 83

State of Colorado
EXECUTIVE CHAMBERS
DENVER

## EXECUTIVE ORDER

### DISTRIBUTION OF FUNDS UNDER THE FURTHER CONTINUING APPROPRIATIONS ACT OF 1983

WHEREAS, the United States Congress enacted on December 20, 1982, Section 155 of the Further Continuing Appropriations Act of 1983, Public Law No. 97-377, which distributes funds collected by the United States Department of Energy as the result of oil pricing settlements to the states, territories and possessions of the United States; and

WHEREAS, Colorado received $2,063,200 under the distribution formula prescribed by Congress; and

WHEREAS, Section 155 of the Further Continuing Appropriations Act of 1983, Public Law No. 97-377, provides that these funds may be used in five federal energy conservation programs:

1) the program under Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C., §§ 6371 *et seq.*;

2) the programs under Part D of Title III of the Energy Policy and Conservation Act (relating to primary and supplemental state energy conservation programs), 42 U.S.C., §§ 6321 *et seq.*;

3) the program under Part C of Title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals), 42 U.S.C., §§ 6371 *et seq.*;

4) programs under the National Energy Extension Service Act, 42 U.S.C., §§ 7001 *et seq.*; and

5) the program under the Low Income Home Energy Assistance Act of 1981, 42 U.S.C., §§ 8621 *et seq.*; and

WHEREAS, Section 155 of the Further Continuing Appropriations Act of 1983, Public Law No. 97-377 provides for these funds to be distributed to the Governor or Chief Executive Officer of the states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

D0011 83

# EXECUTIVE ORDER
## DISTRIBUTION OF FUNDS UNDER THE FURTHER CONTINUING APPROPRIATIONS ACT OF 1983
Page Two

WHEREAS, it is incumbent upon the Governor or Chief Executive Officer to distribute these funds in a manner which will benefit those who may have been injured by the overcharges.

NOW, THEREFORE, I, Richard D. Lamm, Governor of the State of Colorado, pursuant to Section 155 of the Further Continuing Appropriations Act of 1983, Public Law No. 97-377, DO HEREBY ORDER THAT:

1) $265,000 be distributed to the Office of Energy Conservation for the Energy Extension Service Centers to continue programs under the National Energy Extension Service Act, 42 U.S.C., §§ 7001 *et seq.*;

2) $62,000 be distributed to the Office of Energy Conservation for purposes of the Energy Policy and Conservation Act (relating to primary and supplemental state energy conservation programs), 42 U.S.C., §§ 6321 *et seq.* to be used to fund a commercial program that will provide assistance to small and medium-sized businesses.

3) $125,000 be distributed to the Office of Energy Conservation for purposes of the Energy Policy and Conservation Act (relating to primary and supplemental state energy conservation programs), 42 U.S.C., §§ 6321 *et seq.* to be used to fund a series of television programs on home conservation and solar energy.

4) $1,000,000 be distributed to the Office of Energy Conservation under the Low Income Home Energy Assistance Act of 1981, 42 U.S.C., §§ 8621 *et seq.*, to be used to conduct a Low-Cost Winterization Program.

5) $611,200 be distributed to the Department of Local Affairs under Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C., §§ 6371 *et seq.* to be used to conduct a weatherization program for the low-income.

GIVEN under my hand and the Executive Seal of the State of Colorado, this fifteenth day of April, A.D., 1983.

Richard D. Lamm
Governor

STATE OF CONNECTICUT
*OFFICE OF POLICY AND MANAGEMENT*

January 30, 1984

Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Sir/Madam:

On behalf of Governor O'Neill I am reporting on Connecticut's use of petroleum violation escrow funds paid under Section 155 of the Continuing Appropriations Act of 1983. (Warner Amendment)

Connecticut received $3,292,400 in February, 1983. Interest as of December 31 is $274,659. These funds have been used or will be used as follows:

| | |
|---|---|
| Institutional Conservation Program (ICP) | $1,740,000 |
| Energy Extension Service (EES) | 160,000 |
| State Energy Conservation Program (SECP) | 1,667,059 |
| Total | $3,567,059 |

Program details are attached, as is a description of the process established by Connecticut statute for approving the uses of oil settlement monies. If you have further questions, please contact Under Secretary for Energy Bradford Chase at 80 Washington Street, Hartford, CT 06106, (203) 566-2800.

Sincerely,

Anthony V. Milano

Anthony V. Milano
Secretary

AVM/MH/sl
attachment

*Phone:*
80 WASHINGTON STREET • HARTFORD, CONN. 06106
*Equal Opportunity Employer*

## STATE OF CONNECTICUT

## USE OF WARNER AMENDMENT FUNDS

### Breakdown by Program

| Program | Amount | Legislative Approval |
|---|---|---|
| Institutional Conservation Program: | | |
| Energy Conservation Measures in Schools, Hospitals and Local Institutions | $1,740,000 | August 10, 1983 |
| Energy Extension Service: | | |
| Small Business Audits | 60,000 | August 10, 1983 |
| Low Income Weatherization Demonstrations | 100,000 | August 10, 1983 |
| State Energy Conservation Program: | | |
| State Building Technical Audits | 1,100,000 | August 10, 1983 |
| Municipal Building Technical Audits | 100,000 | August 10, 1983 |
| Electricity Study in State Buildings | 150,000 | August 10, 1983 |
| High School Audit Teams | 40,000 | August 10, 1983 |
| Outreach Activities for Solar Bank | 12,500 | September 30, 1983 |
| Solar Bank Contract for Technical Services | 113,638 | September 30, 1983 |
| Total | $3,416,138 | |

It is our intention to request authorization to use the balance of the interest for the SECP Program for the purpose of extending and expanding the above programs.

Modifications may be required in the above distribution if any of the programs are unable to make use of their entire allowance. Any such changes will require legislative approval.

# Connecticut Legislation Enacted Regarding Oil Settlement Funds

*1985*, and each fiscal year thereafter, such assessment shall be calculated by multiplying the company's percentage share of the total gross revenues specified in subdivision (2) of this subsection by seventy per cent of the total amount compiled under subdivision (1) of this subsection. Each public service company shall pay the department on or before September thirtieth, annually, twenty-five per cent of its proposed assessment, adjusted to reflect any credit or amount due under the recalculated assessment for the preceding fiscal year, as determined by the department under subsection (d) of this section, provided that if the company files an objection to a proposed or recalculated assessment under subsection (e) of this section, it may withhold the amount stated in its objection. The company shall pay the remaining seventy-five per cent of its proposed assessment to the department in three equal instalments on or before the following December thirty-first, March thirty-first and June thirtieth, annually.

Sec. 2. (NEW) Notwithstanding the provisions of sections 4-28, 4-30a, 16a-4a and 16a-14 of the general statutes, if the state receives, on or after January 1, 1983, any funds resulting from any settlement resolving oil pricing and allocation regulatory violations under the Emergency Petroleum Allocation Act, as amended, the governor shall submit his recommendations for the allocation of such funds to the joint standing committee of the general assembly having cognizance of matters relating to energy planning and activities. Not later than thirty days after receipt of the governor's recommendations, such committee, in concurrence with the joint standing committee of the general assembly having cognizance of matters relating to appropriations and the budgets of state agencies, shall advise the governor of their approval or modifications, if any, of the recommendations, provided that, if the committees do not act within thirty days, the recommendations shall be deemed approved. Disbursement of such funds shall be in accordance with the governor's recommendations as approved or modified by the committees.

Sec. 3. This act shall take effect from its passage.

Approved May 4, 1983

WILLIAM A. O'NEILL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD

September 9, 1983

The Honorable David Lavine
The Honorable John Larson
The Honorable Janet Polinsky
The Honorable Cornelius O'Leary
Members of the Energy and Public Utilities
   and Appropriations Committees
State Capitol
Hartford, Connecticut 06106

Dear Senators and Representatives:

In accordance with Public Act 83-55, I am submitting a proposal for using a portion of the accumulated interest associated with the petroleum pricing violation escrow funds received under Section 155 of the Further Continuing Appropriations Act, Fiscal Year 1983, of the U.S. Congress, known as the Warner Amendment. You will recall that on August 3, and August 10, 1983, your committees approved expenditure of $3.29 million for several specific projects which are currently under implementation.

I am proposing that $126,138 of the accumulated interest be utilized to assist the Department of Housing in implementing the Solar Energy and Energy Conservation Bank Programs in Connecticut. As you may know, $1 million was awarded to Connecticut by the U.S. Department of Housing and Urban Development for this program, which will be used to leverage additional funds from private lending institutions for the purpose of making energy conservation and solar improvements to residential buildings. None of the Warner funds will be used to cover administrative costs of state agencies.

Your immediate consideration will be helpful in implementing the program, which has a one-year limitation on the obligation of federal funds.

Sincerely,

WILLIAM A. O'NEILL
Governor

# CONNECTICUT PLAN FOR PETROLEUM VIOLATION ESCROW FUNDS
(WARNER AMENDMENT)
PROPOSED USE FOR A PORTION OF THE ACCUMULATED INTEREST
SEPTEMBER 8, 1983

Under Section 155 of the Further Continuing Appropriations Act, Fiscal Year 1983, Congress voted to give to the states $200 million in escrow money collected from the oil industry as restitution for price and allocation violations during the period of price controls, between 1973 and 1980. The purpose is to provide limited restitution to the class of persons injured by such violations.

Connecticut's share was $3,292,400 plus accumulating interest, based on volume of refined petroleum products consumed within the State. A plan was submitted in August for the use of $3,290,000 of these funds. The plan was approved by the Committees of the General Assembly as required by PA 83-55. Specific programs approved to date are:

| | |
|---|---|
| Energy Conservation Measures in Schools, Hospitals, and Local Institutions | $1,740,000 |
| State Building Technical Audits | $1,100,000 |
| Municipal Building Technical Audits | $ 100,000 |
| Electricity Cost Containment Study in State Buildings | $ 150,000 |
| High School Audit Teams | $ 40,000 |
| Small Business Audits | $ 60,000 |
| Low Income Weatherization Demonstrations | $ 100,000 |

Interest has been accumulating on these Warner funds ($167,747.72 as of August 31, 1983, according to the State Treasurer's Office). This submittal is a plan for the use of a portion of the accumulated interest. Such funds must be used in accordance with the same rules as the rest of the Section 155 funds; these rules require that states use the funds as if they were received under one or more of five Federally authorized State energy programs. Such funds must be obligated under the rules and regulations which govern those activities. The designated programs are:

1. Schools, Hospitals, and Local Institutions Program (SHLP).
2. State Energy Conservation Plan (SECP).
3. Energy Extension Service (EES).
4. Low Income Home Energy Assistance Program (LIHEAP).
5. Weatherization Assistance Program.

None of the funds may be used for administrative expenses for states or for DOE, and they cannot supplant funds otherwise available for such programs under State or Federal law. Implementation of the programs is subject to approval by DOE. Within one year of the disbursement, which took place in February, 1983, the states must report to DOE on how the money was or will be spent.

# PROPOSAL FOR THE USE OF A PORTION OF THE ACCUMULATED INTEREST ACCRUING FROM SECTION 155 FUNDS

$126,138 of the accumulated interest will be used to assist the Department of Housing in implementing the new federally-assisted Connecticut Solar Energy and Energy Conservation Bank program. This program consists of three component programs: the Multi-Family Loan Subsidy Program, the Passive Solar Mortgage Subsidy Program, and the Matching Grants for Energy Conservation Program. These uses are permitted under the rules of the five energy programs. Outreach activities will also be funded as part of this proposal. Details of the program are attached.

## USE OF FUNDS IN THE SOLAR ENERGY AND ENERGY CONSERVATION BANK PROGRAM

A. Outreach Activities for Solar Energy and Energy Conservation Bank ($12,500).
These funds will be added to $10,000 that the Department of Housing has available from HUD for promotion and outreach for the Multi-Family Loan Subsidy Program and the Passive Solar Mortgage Subsidy Program. The Department of Housing will use these funds for ads, brochures, graphics, and salaries for outreach activities.

B. Contract with Connecticut Housing Investment Fund (CHIF) ($113,638).
CHIF will assist the Department of Housing in implementing the Solar Bank by providing counseling, financial services, and technical services for the three basic component programs described below.

1. Multi-Family Loan Subsidy Program. This program will provide owners of multi-family dwellings of 5 or more units with subsidized loans to perform energy conservation measures, as determined by an RCS or comparable audit. The loans will be provided by participating lenders, and subsidies will be provided by the Solar Energy and Energy Conservation Bank through the Department of Housing. $620,000 will be available for the subsidies, which will be in the form of reduction of loan principal and will be available for homes constructed prior to 1980. Subsidy amounts will be 20% of the loan principal or $400 per unit, whichever is less. In addition, participating lenders will receive a guarantee in the form of 25% of the total loan amounts. Funding for this guarantee will be provided by the State's major utility companies.

2. Passive Solar Mortgage Subsidy Program. This program is designed to encourage the use of passive solar design features in newly constructed or substantially rehabilitated 1-4 family residential structures. Financial assistance will be provided in the form of a reduction of principal on the mortgage. The maximum subsidies will be:

   $ 5,000 – Single Family
   $ 7,500 – Two Family
   $10,000 – Three or Four Family

   About $250,000 in HUD Solar Bank funds will be available for this program.

3. Matching Grants for Energy Conservation. Matching grants will be available to low-income recipients in the Energy Conservation Loan Program administered by the Department of Housing. $100,000 of Solar Bank funds will be available for a 50/50 match of loan funds for the installation of measures identified by an energy audit as being cost effective. Recipients who meet the income guidelines for Section subsidies will be eligible for grants as follows:

   $1,250 – Single Family
   $2,000 – Two Family
   $2,750 – Three Family
   $3,500 – Four Family

WILLIAM A. O'NEILL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD

August 3, 1983

The Honorable David Levine
The Honorable John Larson
Members of the Joint Standing Committee
on Energy and Public Utilities
State Capitol
Hartford, CT 06106

The Honorable Janet Polinsky
The Honorable Cornelius O'Leary
Members of the Joint Standing Committee
on Appropriations
State Capitol
Hartford, CT 06106

In accordance with Public Act 83-55, I am submitting the Plan for the use of the petroleum pricing violation escrow funds received under Section 155 of the Further Continuing Appropriations Act, Fiscal Year 1983, of the U.S. Congress.

This Plan contains recommendations for the use of $3.29 million of the $3,292,400 received in February. Interest is accruing, and is required to be used within the same guidelines as the Section 155 funds themselves. Future recommendations will deal with the balance in the account.

I believe this Plan addresses the restitutionary goals set forth by Congress and the U.S. Department of Energy. Your timely consideration and review would be appreciated in order that the recommended programs can be implemented promptly.

Sincerely,

WILLIAM A. O'NEILL
Governor

# CONNECTICUT PLAN FOR PETROLEUM VIOLATION ESCROW FUNDS (WARNER AMENDMENT)

## AUGUST 3, 1983

Under Section 155 of the Further Continuing Appropriations Act, Fiscal Year 1983, Congress voted to give to the states $200 million in escrow money collected from the oil industry as restitution for price and allocation violations during the period of price controls, betweeen 1973 and 1980. The purpose is to provide limited restitution to the class of persons injured by such violations.

Connecticut's share is $3,292,400 plus accumulating interest, based on volume of refined petroleum products consumed within the State.

The states are required to use the funds as if they were received under one or more of five Federally authorized State energy programs and to obligate such funds under the rules and regulations which govern those activities. The designated programs are:

1. Schools, Hospitals, and Local Institutions Program (SHLP)
2. State Energy Conservation Plans (SECP)
3. Energy Extension Service (EES)
4. Low Income Home Energy Assistance Program (LIHEAP); and
5. Weatherization Assistance Program.

None of the funds may be used for administrative expenses for states or for DOE, and they cannot supplant funds otherwise available for such programs under State or Federal law. If the State Plans do not already include measures which cover the intended use, the Plans must be amended. Implementation of the programs is therefore subject to approval by DOE. Within one year of the disbursement, which took place in February, 1983, the

The Energy Division has previously established the following criteria for the use of petroleum violation funds:

1. Restitutionary effect
2. Statewide availability and impact
3. Furtherance of State Energy policy
4. Visibility
5. Leveraging effect
6. Ease of administration
7. Speed of implementation

The expenditure plan which follows conforms to these criteria. It includes components for small businesses, low income citizens, school buildings, town governments, and state buildings, thereby benefitting Connecticut citizens of all classes and fulfilling the restitutionary purpose of the law.

## SECTION 155 FUNDS: ALLOCATIONS BY PROGRAM

### o SCHOOLS, HOSPITALS, AND LOCAL INSTITUTIONS PROGRAM

Supplement Funds for Energy Conservation Measures: $1.74 million

The additional funds will provide for the inclusion of all qualified applicants in the upcoming Cycle V awards and will fund an additional cycle next year after technical audits are completed. Recipients, who match the funds on a 50/50 basis, will include state, local, and private schools and possibly hospitals.

### o STATE ENERGY CONSERVATION PLAN

State Building Technical Audits: $1.1 million

Approximately 250 State buildings which have not yet received technical audits (TAs) will be audited in order to determine priorities for funding of energy conservation measures through state bond funds. Audits will be performed by the Department of Administrative Services or contracted out by them to outside engineering consultants.

Municipal Technical Audits: $100,000

Approximately 167 technical audits will be provided as a follow-up to energy audits we funded for municipal and school buildings last year. Towns will select their own engineers to perform the audits.

Electricity Cost Containment in State Buildings $150,000

A six month feasibility study will be undertaken to improve the management of electric service from a statewide perspective. Electric utility data will be collected and analyzed, load management opportunities will be investigated and administrative and technical cost and energy savings concepts will be validated. Investment rates-of-return will be estimated for statewide and site specific applications. Besides raising the consciousness of the agency buildings managers, this project will set a good example for other sectors in the State, such as large industries and other institutions. The project will be managed by the Department of Administrative Services, with OPM maintaining oversight responsibility.

High School Audit Teams: $40,000

A High School Audit Team in the Town of Wallingford has improved energy consciousness in all segments of the community. This program will be replicated in other towns. Teams of high school students in twenty to thirty towns will be trained and will perform energy audits of municipally owned buildings, small businesses, non-profit and residential buildings. They will monitor energy consumption in their schools following implementation of conservation measures.

o ENERGY EXTENSION SERVICE

Small Business Audits: $60,000

Two additional auditors will be hired by the Department of Economic Development, which will enable them to double the number of audits currently performed for small businesses throughout the State. As of June 30, 2428 small businesses have been audited. These funds will provide for 390 audits in the current program year.

o ENERGY EXTENSION SERVICE OR STATE ENERGY CONSERVATION PLAN

Low Income Weatherization Demonstration Projects $100,000

These funds will be combined with $3 million in existing LIHEAP weatherization funds, which will be earmarked for low income weatherization projects throughout the State. A review board will be established to receive applications from groups with

1) innovative projects in need of initial funding, or
2) currently operating projects in need of assistance or improvement.

The projects will receive basic weatherization services through LIHEAP funds and other types of assistance, such as outreach, technical assistance, leveraging, or training, through EES or SECP funds. All projects will be required to meet the program requirements of LIHEAP, EES, or SECP, whichever program they are receiving assistance from. Priority will be given to areas not otherwise being addressed or adequately served.

o UNDESIGNATED BALANCE $2,400 plus accruing interest

To be determined later.

Government of the District of Columbia District of Columbia Energy Office
Lansburgh Building • Suite 500 • 420 - 7th Street, N.W. • Washington, D.C. 20004

December 23, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

On April 29, 1983, the City Administrator of the District of Columbia transmitted to Mr. William Kaplan, Director, U.S. Department of Energy, Philadelphia Support Office, a letter which set forth the District's allocation of funds received under Section 155 of the Further Continuing Appropriations Act for Fiscal Year 1983 (enclosed).

The allocation of these funds among the various eligible energy program areas remains unchanged; therefore, the amounts cited in the letter to Mr. Kaplan reflect the District's application of the Section 155 funds to the statutorily eligible energy programs.

Should you require additional information, please contact me at 727-1800.

All the best,

Chuck Clinton

Chuck Clinton, Director
D.C. Energy Office

ENCLOSURE

cc: Thomas Downs
City Administrator
William Kaplan, Director
DOE

CB

Energy Office
File

RECEIVED
MAY 9 1983
Chuck

APR 29 1983

Mr. William Kaplan, Director
U.S. Department of Energy
Philadelphia Support Office
1421 Cherry Street
Philadelphia, Pennsylvania 19102

Dear Mr. Kaplan:

I am in receipt of your request for information regarding the District of Columbia's dispersement plans for the funds received under Section 155 of the Further Continuing Appropriations Act, Fiscal Year 1983.

From the list of program activities which are statutorily eligible for funding, the District of Columbia is proposing to expend the escrow funds in the following manner:

| | |
|---|---|
| State Energy Conservation | $ 201,090 |
| Schools and Hospitals | $ 45,000 |
| Energy Extension Service | $ 119,910 |
| Low Income Home Energy Assistance Program | $ 100,000 |

The District of Columbia's escrow funding dispersement allocation is clearly reflective of our strong commitment to energy efficiency and equitable treatment for consumers in the market place. Additionally, the proposed formula is also cognizant of the availability of federal assistance for the aforestated programmatic areas.

Thank you for your interest in this matter. Should you require additional information on the District of Columbia's energy programs, please contact Mr. Charles J. Clinton, Director of the D.C. Energy Office. The Energy Office is located at 420 - 7th Street, N.W., Suite 500, Washington, D.C. 20004 or by calling (202) 727-1800.

Sincerely,

Elijah B. Rogers
City Administrator

cc: Thomas Downs
Chuck Clinton

STATE OF DELAWARE
DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF FACILITIES MANAGEMENT
P.O. BOX 1401
O'NEILL BUILDING
DOVER, DELAWARE 19901

January 24, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

Delaware made the following allocation of $912,800. it received pursuant to the Further Continuing Appropriations Act of 1983.

$304,000. were allocated to the Energy Conservation Program under Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C., §6371 et seq.

$408,800. were allocated to the Energy Conservation Program under Part G of Title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals), 42 U.S.C., §§6371 et seq. These funds were used during Cycle V.

The remaining $200,000. are programmed to be used in a building energy efficiency demonstration project as an Energy Conservation Program under Part D of Title III of the Energy Policy. If the full amount is not used, we plan to reprogram it to Schools and Hospitals.

Sincerely,

Robert P. Bartley
Robert P. Bartley
Assistant Director For Energy

RPB/fca

STATE OF FLORIDA

OFFICE OF GOVERNOR BOB GRAHAM

October 14, 1983

Honorable Donald P. Hodel
Secretary of Energy
Washington, D.C. 20585

Dear Mr. Secretary:

The Florida Legislature has appropriated $9,105,800 of oil overcharge settlement moneys made available to the State of Florida by the Warner Amendment. Funds have been allocated to the following energy conservation programs:

| | | |
|---|---|---|
| ° | Institutional Building Grant | $3,400,000 |
| | (Over $600,000 set aside for Technical Assistance and 30 grants awarded for Energy Conservation Measures) | |
| ° | Low-Income Weatherization | $1,638,000 |
| | (Targets over 2,000 homes) | |
| ° | Energy Extension Service | -0- |
| ° | Low-Income Energy Assistance | -0- |
| ° | State Energy Conservation Program | |
| | Transportation. Evaluating urban traffic systems, implementing third-party vanpool programs, continuing ridesharing programs, developing and implementing timing plans for state and local traffic signals, planning bicycle transportation in metropolitan areas, and optimizing computer controlled traffic signal systems. | $3,112,500 |

| | |
|---|---|
| State/Local Government. Implementing workshops to train State and local agency equipment operators in preventive maintenance techniques, assessing the most cost effective energy equipment and techniques to update the Florida Model Energy Efficiency Code for Building Construction, and studying energy considerations in local land-use planning processes. | $ 830,000 |
| Solar/Passive Design. Developing and implementing training workshops for architects, engineers, and school facility planners in passive design and solar hot water heating systems. | $ 65,000 |
| Commercial Outreach. Organizing energy outreach programs through private sector organizations and trade associations. | $ 60,300 |

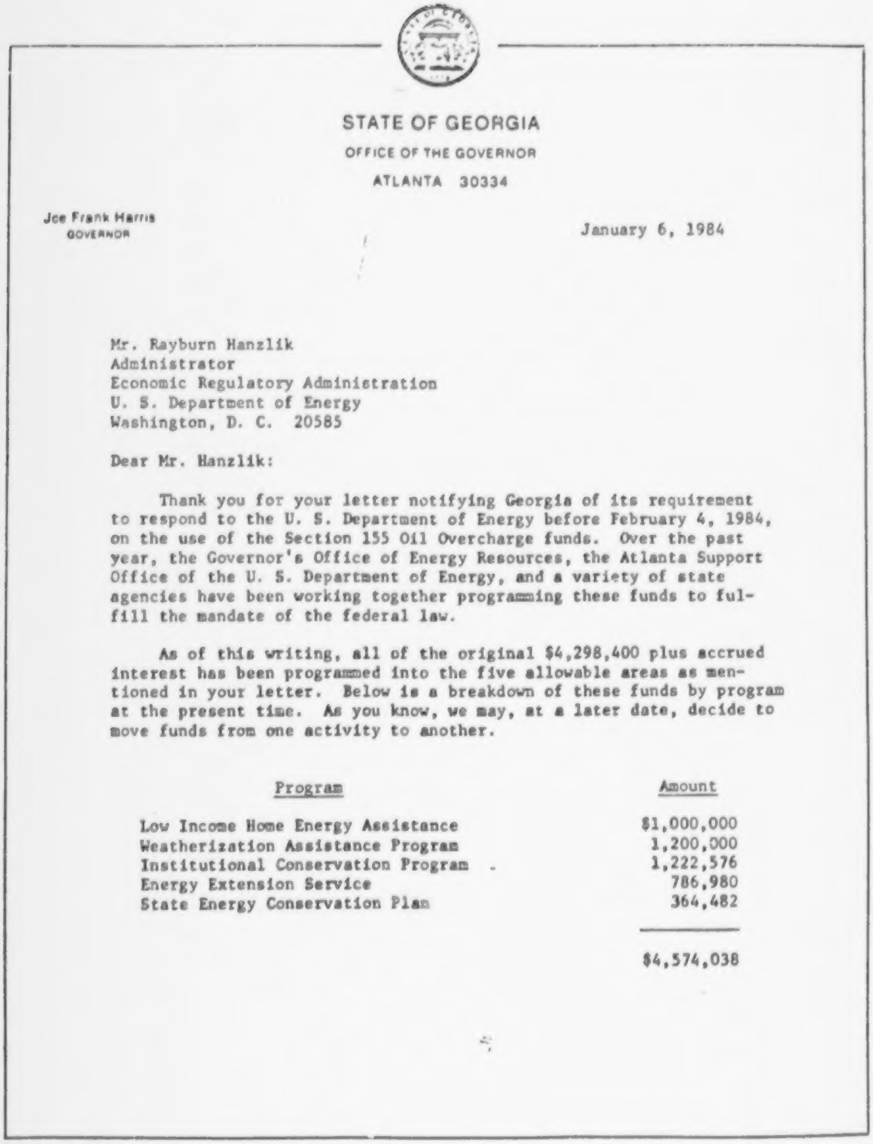
These programs were selected because of their potential benefit to Florida citizens impacted by the crude oil price violations. Should you have questions on any aspect of this disbursement, please call Jay Hakes at (904)488-6764.

With kind regards,

Sincerely,

Bob Graham

Governor



STATE OF GEORGIA
OFFICE OF THE GOVERNOR
ATLANTA 30334

Joe Frank Harris
GOVERNOR

January 6, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
U. S. Department of Energy
Washington, D. C. 20585

Dear Mr. Hanzlik:

Thank you for your letter notifying Georgia of its requirement to respond to the U. S. Department of Energy before February 4, 1984, on the use of the Section 155 Oil Overcharge funds. Over the past year, the Governor's Office of Energy Resources, the Atlanta Support Office of the U. S. Department of Energy, and a variety of state agencies have been working together programming these funds to fulfill the mandate of the federal law.

As of this writing, all of the original $4,298,400 plus accrued interest has been programmed into the five allowable areas as mentioned in your letter. Below is a breakdown of these funds by program at the present time. As you know, we may, at a later date, decide to move funds from one activity to another.

| Program | Amount |
|---|---|
| Low Income Home Energy Assistance | $1,000,000 |
| Weatherization Assistance Program | 1,200,000 |
| Institutional Conservation Program | 1,222,576 |
| Energy Extension Service | 786,980 |
| State Energy Conservation Plan | 364,482 |
| | $4,574,038 |

This amount includes $275,638 in interest which has accrued since the funds were received. In addition, the Office of Energy Resources sends, on a quarterly basis, a detailed financial statement that shows the obligations and expenditures for each activity within the five programs described above to the Atlanta Support Office of the U. S. Department of Energy. If you would like to receive a copy of this document, we would be pleased to forward it to you.

If you have any questions or would like further information, please let me know.

With kindest regards, I remain

Sincerely,

Joe Frank Harris

JFH:pbm

cc: Mr. P. Marshall Ryan
Atlanta Support Office
U. S. Department of Energy

EXECUTIVE CHAMBERS
HONOLULU

GEORGE R. ARIYOSHI
GOVERNOR

January 26, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
U.S. Department of Energy
Washington, D. C. 20585

Dear Mr. Hanzlik:

This is our report to the Secretary of Energy on the use of oil pricing funds.

As required under the Further Continuing Appropriations Act of 1983, we have identified the programs that have been, or are to be, funded with the designated petroleum violation escrow funds disbursed to Hawaii by the Department of Energy. We received a payment of $1,380,400 on February 4, 1983.

Funding Plan for FY 83/84 AND FY 84/85

| Program | FY 83/84 | FY 84/85 | Total |
|---|---|---|---|
| Energy Policy and Conservation Act, Title III, Part D | $190,500 | $226,000 | $ 416,500 |
| Energy Policy and Conservation Act, Title III, Part G | 57,500 | 13,000 | 70,500 |
| National Energy Extension Services Act | 362,200 | 531,200 | 893,400 |
| Total | $610,200 | $770,200 | $1,380,400 |

It is our understanding that this report is simply an explanation of how, following Section 155 guidelines, we have allocated funds to date and how we tentatively plan to expend the funds in the future. Therefore, the aforementioned allocations and dates should be considered as intended, rather than established, figures for each program and period. Should we redistribute the dollar amounts or change the expending period in response to changed energy conservation opportunities, we shall dedicate funds only to the five programs specified by the Further Continuing Appropriations Act of 1983, Section 155.

With warm personal regards, I remain,

Yours very truly,

George R. Ariyoshi

George R. Ariyoshi

cc: Ms. Martha Dixon
U.S. Department of Energy
San Francisco Operations Office

Mrs. Eileen Yoshinaka
Department of Energy
Pacific Site Office

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

December 21, 1983

Mr. Reyburn Hanzlik, Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

At the request of Governor Evans, I am submitting the following report describing the allocation of Idaho's $917,400 from oil pricing funds in accordance with the Further Continuing Appropriations Act of 1983. The funds were disbursed among three federal programs in the following amounts:

| Program | Amount |
|---|---|
| Energy Conservation and Existing Buildings Act of 1976, Part A (42 U.S.C. 6861 *et seq.*) | $250,000 |
| Energy Policy and Conservation Act, Part D (42 U.S.C. 6321 *et seq.*) | 601,400 |
| National Energy Extension Service Act (42 U.S.C. 7001 *et seq.*) | 66,000 |

The $250,000 added to the programs under the Energy Conservation and Existing Buildings Act purchased weatherization materials for low-income residents of the state.

The $601,400 applied to the State Energy Conservation Program (Energy Policy and Conservation Act) assisted Idaho's conservation efforts in the following areas:

1. Energy Development and Study Fund

   This program measure was established as a policy under the Idaho State Water Plan which was adopted by the Idaho Water Resource Board in January, 1982. This fund, administered by the Department, contains three program elements. One program element involves the Idaho Department of Water Resources (IDWR) and the Idaho Housing Agency (IHA). The IHA, a self-supporting agency, was created by the Idaho State Legislature in 1972 to provide decent, affordable housing for limited-income Idahoans. The IDWR has contracted with IHA to buy down interest on home improvement loans for the purpose of energy conservation and renewable resource measures. This element is providing low-interest financing to promote conservation and renewables in the residential sector.

A second program component buys down interest on commercial loans to finance retrofits on burner mechanisms for residential oil furnaces. This is a cooperative effort among IDWR, a major state lending institution, the Oil Heating Institute, oil dealers, and furnace parts wholesalers. Oil furnaces which do not pass 75% efficiency tests qualify for the program and oil furnace users are offered a retrofit financed at a lower interest rate.

The third program element provides interest buy down on commercial loans to finance conservation and renewable resource measures exclusive of owner-occupied residences. Again, in conjunction with a major lending institution, low-interest loans are available to applicants who are approved both by IDWR (for project feasibility) and by the lending institution (for credit worthiness).

2. Communications

Oil pricing funds supplemented the Communications Program Measure which is responsible for the dissemination of information accumulated and developed by other programs in the Plan. Communications assists and supports programs through a variety of formats, including press releases, developing brochures, preparing slide shows, processing and delivering radio and television spots, and publishing an energy monthly tabloid.

3. Industrial Conservation

Boiler audits and boiler courses are emphasized under Industrial Conservation. The objective is to identify and demonstrate opportunities for cost-effective boiler efficiency improvements. IDWR is responsible for recommending and prioritizing retrofit measures for state facility boilers following boiler audits. IDWR also contracts with the State Division of Vocational Education to present boiler efficiency and operation courses through adult education night classes. These classes are held at six locations throughout the state.

A portion of the $66,000 allocated to the Energy Extension Service (EES) (National Energy Extension Service Act) was used to maintain and operate three Regional Energy Extension Service Offices from May 1 to June 30, 1983. The regional offices implemented the field operations of the EES program as designated in the FY82 EES State Plan. Specific work and services included maintaining a business office that provided "across the counter" information and referral service on energy topics, displaying and providing energy-specific printed materials, and soliciting and responding to requests for technical assistance.

The remainder of the oil pricing funds will be used by EES to sponsor a boiler retrofit demonstration(s) for one or more state facilities identified through SECP efforts previously described. The IDWR staff will monitor the retrofits performed for energy savings and provide follow-up technical assistance to other facilities interested in cost-effective retrofits.

If you have any questions regarding the use of these oil pricing funds, please contact Robert W. Hoppie, Bureau Chief, of the Bureau of Energy Resources, Idaho Department of Water Resources at (208) 334-3597.

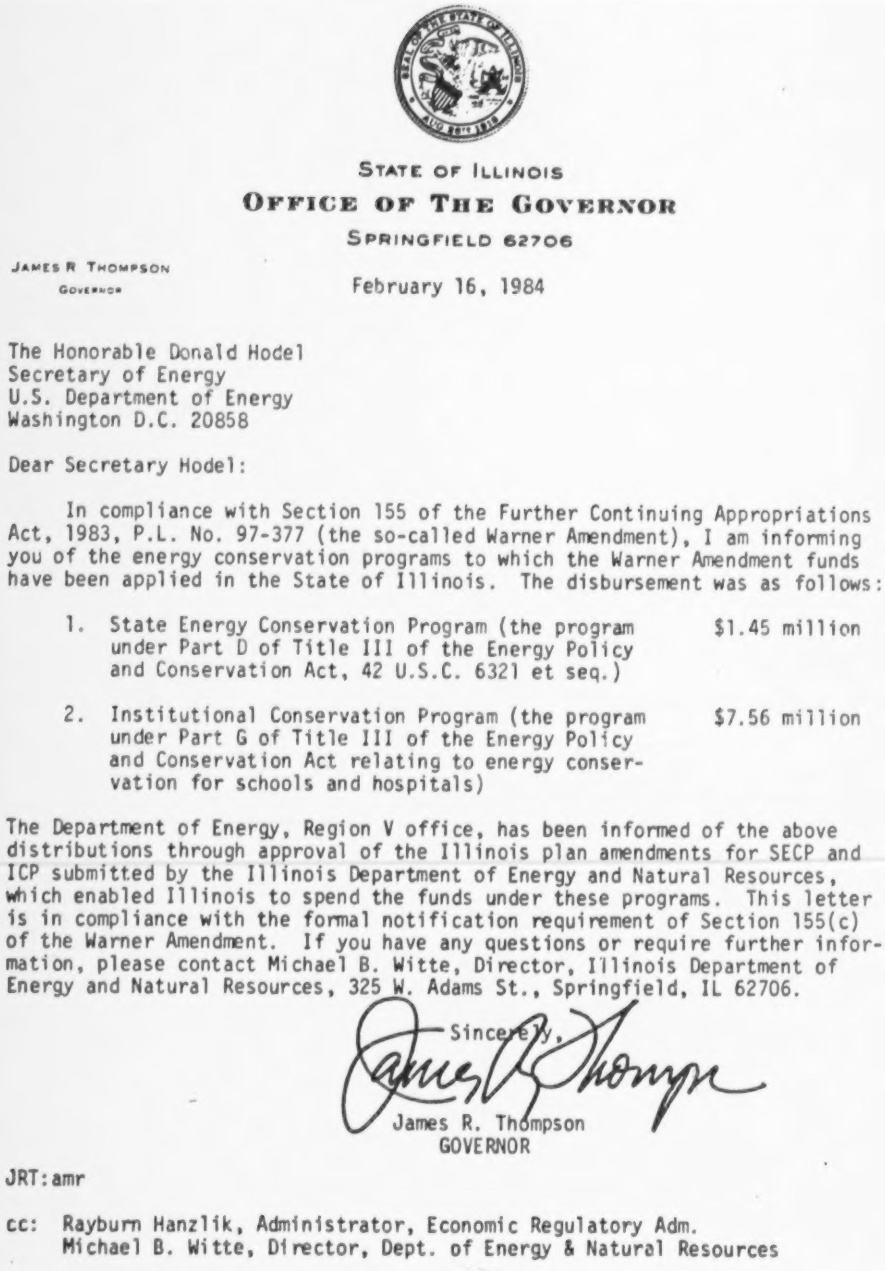
Sincerely,

A. Kenneth Dunn

A. Kenneth Dunn
Director

AKD:JS:bb

cc: Office of Governor



STATE OF ILLINOIS
**OFFICE OF THE GOVERNOR**
SPRINGFIELD 62706

JAMES R THOMPSON
GOVERNOR

February 16, 1984

The Honorable Donald Hodel
Secretary of Energy
U.S. Department of Energy
Washington D.C. 20858

Dear Secretary Hodel:

In compliance with Section 155 of the Further Continuing Appropriations Act, 1983, P.L. No. 97-377 (the so-called Warner Amendment), I am informing you of the energy conservation programs to which the Warner Amendment funds have been applied in the State of Illinois. The disbursement was as follows:

| | | |
|---|---|---|
| 1. | State Energy Conservation Program (the program under Part D of Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.) | $1.45 million |
| 2. | Institutional Conservation Program (the program under Part G of Title III of the Energy Policy and Conservation Act relating to energy conservation for schools and hospitals) | $7.56 million |

The Department of Energy, Region V office, has been informed of the above distributions through approval of the Illinois plan amendments for SECP and ICP submitted by the Illinois Department of Energy and Natural Resources, which enabled Illinois to spend the funds under these programs. This letter is in compliance with the formal notification requirement of Section 155(c) of the Warner Amendment. If you have any questions or require further information, please contact Michael B. Witte, Director, Illinois Department of Energy and Natural Resources, 325 W. Adams St., Springfield, IL 62706.

Sincerely,

James R. Thompson
GOVERNOR

JRT:amr

cc: Rayburn Hanzlik, Administrator, Economic Regulatory Adm.
Michael B. Witte, Director, Dept. of Energy & Natural Resources

OFFICE OF THE GOVERNOR
INDIANAPOLIS, INDIANA 46204-2797

ROBERT D. ORR
GOVERNOR

December 27, 1983

Mr. Raymond Hanzlik, Administrator
Economic Regulatory Administration
Department of Energy
Washington, D. C. 20585

Dear Mr. Hanzlik:

In accordance with the requirements of the Warner Act, this is to advise you that all of the $4,717,400 allocated to the State of Indiana has been designated to supplement Low Income Home Energy Assistance Block Grant (42 USC 8621 et seq.) funds provided to this state through the Department of Health and Human Services.

The Indiana Department on Aging and Community Services has been designated by this office to administer that program, and the Warner Act funds will be administered by that agency in conducting energy assistance programs.

Your review and approval of this plan for the expenditure of the above funds would be greatly appreciated. If this office needs to be of further assistance, Mr. Al Gage, my Administrative Assistant, should be contacted at (317) 232-4577.

Sincerely,

Robert D. Orr

ROBERT D. ORR
Governor

RDO:lc

cc: Jean Merritt, Executive Director
Indiana Dept. on Aging and Community Services

Carl

**STATE OF INDIANA**

ROBERT D. ORR - Governor

**DEPARTMENT ON AGING & COMMUNITY SERVICES**
115 North Pennsylvania Street
Indianapolis, Indiana 46204
JEAN MERRITT
Executive Director

December 6, 1983

Mr. Rayburn Hanzlik, Administrator
Economic Regulatory Administration
Department Of Energy
Washington, D. C. 20585

Re: Petroleum Violation Escrow (PVE) Funds

Dear Mr. Hanzlik:

Enclosed is a copy of a letter dated October 13, 1983, that was sent to your regional office in Chicago, Illinois concerning the reporting on P.V.E. funds. I was told by the Department Of Energy personnel that, since these monies were used in the Low Income Home Energy Assistance Program (L.I.H.E.A.P.) that reporting to the Department Of Energy was unnecessary. These monies were used to assist low income households with their energy needs.

If you require additional information, please contact or notify the undersigned.

Sincerely,
Michael J. Horstman
Michael J. Horstman, CPA
Controller

MJH/jl

cc: Jean Merritt
Pat Hall

Enclosure

[illegible] ATOR
83 DEC 8 P12:50

AN EQUAL OPPORTUNITY EMPLOYER

**IOWA ENERGY POLICY COUNCIL**

CAPITOL COMPLEX — DES MOINES, IOWA 50319 — 515-281-4420

Robert F. Tyson
Director and Chairman

Terry E. Branstad
Governor

February 14, 1984

Mr. Carl Corrallo
Solicitor, Economic Regulatory
Administration
2000 M Street, N.W.
Washington, D. C. 20461

Dear Mr. Corrallo:

Subject: Report on Warner Amendment Funds

The state of Iowa is filing this report in compliance with P.L. 97-377 which distributed oil overcharge funds to the states pursuant to Section 155 (Warner Amendment). The Warner Amendment directed the expenditure of these petroleum violation escrow funds under one of five U. S. Department of Energy programs:

- the Weatherization Assistance Program which funds weatherization of low-income housing,
- the Low-Income Home Energy Assistance Program which assists low-income persons to pay their fuel bills,
- the Institutional Conservation Program which assists schools and hospitals in auditing their facilities and assists with the installation of energy conservation measures,
- the Energy Extension Service which provides information in outreach programs for the small energy consumer, and
- the State Energy Conservation Plan which includes a variety of programs designed to assist citizens to reduce their energy consumption.

The Warner Amendment award to the State of Iowa was $2,462,200, received in January, 1983.

For the 1983 legislative session the Governor recommended that 100% of the Warner Amendment funds be placed in the Weatherization Assistance Program. However, the legislature chose to direct the expenditure of these funds into building energy management programs for government buildings in three areas:

1. Five hundred and seventy-five thousand dollars ($575,000) was appropriated to the Iowa State Board of Regents buildings and the state appropriated $600,000 from the general fund in matching funds (SF 551) for capital energy conservation expenditures.

2. Five hundred thousand dollars ($500,000) of the Warner Amendment funds and a matching $500,000 from the state general fund was to be used for energy management in state buildings. Sixty percent of these funds must be used in counties in Iowa exhibiting high rates of unemployment (SF 548).

3. $1,387,200 is to be spent for local governments energy management (SF 548). This program, which requires an equivalent match, includes several activities:

    a. Cost-share grants will be awarded to area education agencies to hire energy management technicians for a two-year period. The energy management technician is a paraprofessional trained to assist institutions to manage their energy consumption, by working with existing building staff to implement appropriate operations and maintenance procedures.

    b. Cost-share grants will be awarded to local governments to obtain training for existing personnel in energy management in their respective jobs. The first type of training to be offered will be for water and waste water treatment personnel.

    c. Cost-share grants will be given to local governments to conduct walk-through energy audits to identify operations and maintenance procedures needed to conduct engineering studies of their buildings to identify appropriate energy conservation management capital improvements.

    d. Cost-share grants will be awarded to local governments to implement demonstration projects of energy management including the installation of energy conservation measures. These grants will include funds for metering devices to track energy consumption in order to provide data for marketing the techniques to other local governments.

Since the passage of this legislative package last year the Governor of Iowa has declared a fiscal crisis and impounded all general fund capital appropriations. In addition, he reduced all other appropriations across-the-board by 2.8%. The impact of this action on these programs is that the $600,000 match for the Iowa State Board of Regents Building Energy Management Program (No. 1) has been impounded and is not likely to be released. The Board of Regents continues to pursue this program in anticipation of finding matching funds from their individual institutions. The across-the-board reduction of 2.8% reduces the $500,000 general fund match for the energy management programs in state buildings (No. 2).

The programs outlined above are being implemented under the federal guidelines of the State Energy Conservation Plan, with the exception of the energy management technician (No. 3a) which will be operated under the guidelines of the Institutional Conservation Program. Each energy management technician placed under this program will perform a minimum of 50 new walk-through energy audits.

While extended delays occurred in the implementation of these programs due to regulatory barriers encountered with DOE, it is anticipated that a majority of these programs will be implemented and their funds expended prior to June 30, 1984. (As of January 31, 1984, $400,000 has been expended.) Those projects that have not been completed will be carried forward into the next fiscal year.

Additional oil overcharge funds received by the state are proposed to be allocated with 50% of the funds going for low-income weatherization and 50% for governmental building energy management (programs similar to those already started and as described above).

Sincerely,

Dennis Guffey
for Robert F. Tyson
Director

RFT:cs

CC: Honorable Terry E. Branstad, Governor of Iowa
Ronald J. Brown, Director, U. S. Department of Energy,
Kansas City Support Office, Kansas City, Missouri

JOHN Y. BROWN, JR.
GOVERNOR

COMMONWEALTH
OF KENTUCKY

Office of the Governor
FRANKFORT, KENTUCKY 40601

February 22, 1983

The Honorable Donald Paul Hodel
Secretary
U.S. Department of Energy
Office of the Secretary
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Secretary Hodel:

As you know, Section 155 of the Further Continuing Appropriations Act of 1983, Public Law 97-377, enacted on December 20, 1982, requires the chief executive officer of each state to notify you, as U.S. Secretary of Energy, concerning the use of funds disbursed by your agency from oil pricing settlements.

In accordance with this requirement, please be advised that the Commonwealth of Kentucky has allocated the $2,570,200 received under the above provisions to the Low-Income Home Energy Assistance program administered by our Cabinet for Human Resources.

Sincerely,

John Y. Brown Jr.

John Y. Brown, Jr.,
Governor

JYB:opm

DAVID C. TREEN
GOVERNOR

State of Louisiana
EXECUTIVE DEPARTMENT
Baton Rouge

February 2, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
U. S. Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

Pursuant to the requirements of the Further Continuing Appropriations Act of 1983, the following programs have been designated to receive the amounts listed.

| Program | Amount |
|---|---|
| Institutional Conservation Program<br>(Schools & Hospitals)<br>Part G of Title III of the Energy Policy and Conservation Act, 42 U.S.C., SS 6371 et seq.; | $ 5,229,000<br>(plus accrued interest) |
| Energy Extension Service under the National Energy Extension Service Act, 42 U.S.C., SS 7001 et seq. | $ 673,800 |

Sincerely,

David C. Treen

David C. Treen

DCT:bka

cc: Mr. Frank P. Simoneaux
Secretary, DNR

The Honorable William Guste
Attorney General

U.S. Department of Energy
Dallas, Texas 75235

Joseph E. Brennan
Governor

State of Maine
Executive Department
OFFICE OF ENERGY RESOURCES
State House Station 53
Augusta, Maine 04333
(207) 289-3811

John M. Kerry
Director

February 3, 1984

Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

As required by Statute, I am submitting Maine's report on the use of Warner Amendment funds.

| | |
|---|---|
| SECP - low interest residential conservation loans | $400,000 |
| LIHEAP - supplement low-income fuel assistance (state) | 790,000 |
| WAP - supplement low-income weatherization | 200,000 |
| LIHEAP - supplement low-income fuel assistance(indians) | 60,000 |
| | $1,450,000 |

If you need further information, please do not hestiate to contact me.

Sincerely,

John M. Kerry

JMK/lab

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

June 9, 1983

The Honorable Donald Paul Hodel
Secretary
U.S. Department of Energy
Washington, D.C. 20585

Dear Secretary Hodel:

Maryland received $3,575,800.00 under the provisions of the 1983 Further Continuing Appropriations Act as its portion of the funds collected by the U.S. Department of Energy from oil pricing settlements and distributed to the States. I have appointed an Oil Price Overcharge Task Force to recommend programs for disbursing these funds. Based on the recommendations of the Task Force, I have determined that Maryland will allocate its funds as follows:

| | |
|---|---:|
| Weatherization Assistance Program: | $3,000,000 |
| Energy Extension Service: | 318,094 |
| Low Income Energy Assistance: | 257,706 |

In addition, Maryland received $331,906 as the State's share of refunds paid by Standard Oil of Ohio in settlement of the enforcement action brought by the Department of Energy. These funds will be disbursed as follows:

| | |
|---|---:|
| Institutional Conservation Program: | $250,000 |
| Energy Extension Service: | 81,906 |

Maryland is pleased to have had the opportunity to determine the appropriate use of these funds. They will benefit many classes of consumers who were affected by oil price overcharges. We anticipate utilizing the same procedure, involving state, county, and municipal government officials and members of the public, to determine appropriate uses for additional oil price overcharge funds which may be disbursed to Maryland.

Sincerely,

Harry Hughes

Governor

GENERAL INFORMATION (301) 269-3431-TTY FOR DEAF BALTO. AREA 269-2609/D C METRO 565-0450

*The Commonwealth of Massachusetts*
*Executive Office of Energy Resources*
*100 Cambridge Street, Room 1500*
*Boston, Massachusetts 02202*

MICHAEL S. DUKAKIS
GOVERNOR
SHARON M. POLLARD
SECRETARY

(617) 727-4732

January 31, 1984

Administrator
Economic Regulatory Administration
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Rayburn Hanzlik:

The Massachusetts Executive Office of Energy Resources (MEOER) was designated by Governor Michael M. Dukakis as the lead agency for the disbursement of $6,645,800 in Section 155 funds pursuant to the Further Continuing Appropriations Act of 1983.

As required by that Act, I am submitting the attached report delineating the disbursement of the funds received by the Commonwealth of Massachusetts.

Should you have any questions, please call me at 617-727-4732.

Sincerely,

Sharon M. Pollard

SHARON M. POLLARD
Secretary

SMP/rm/eb

## ALLOCATION OF SECTION 155 FUNDS

The following specifies the programmatic allocation of the funds by Federal program and the percentage of monies going to each.

### STATE ENERGY CONSERVATION PLAN (SECP)

| | | |
|---|---|---|
| Residential Division | $2,425,000 | |
| Policy Development | $ 35,000 | |
| Legal Interventions | $ 100,000 | |
| Institutional Conservation Division | $ 500,000 | |
| Renewable Resources Division | $ 500,000 | |
| Commercial/Industrial Division | $1,350,000 | |
| CARAVAN (Vanpooling Ride Service) | $ 25,000 | |
| | $4,935,000 | (74.25%) |

### WEATHERIZATION ASSISTANCE PROGRAM (WAP)

MEOER will transfer $1,150.800 (17.31%) to the Massachusetts Executive Office of Communities and Development (EOCD), the Commonwealth's lead agency for WAP.

### ENERGY EXTENSION SERVICE (EES)

| | | |
|---|---|---|
| Solar Bank Marketing | $ 70,000 | |
| Elementary Education | $ 50,000 | |
| Publicity on Energy Conservation | $ 70,000 | |
| Local Government Technical Assistance | $ 25,000 | |
| Farmer's Home Loan Program | $ 25,000 | |
| Bulk/Buying Coop Marketing | $ 40,000 | |
| Energy Conservation Jobs Training | $150,000 | |
| Information/Education to MEOER's 4 Program Sectors | $ 60,000 | |
| Elderly Advocacy Program | $ 70,000 | |
| | $560,000 | (8.42%) |

**TOTAL SECTION 155 FUNDS ALLOCATIONS $6,645,800 (100%)**

Recd 2/7

**STATE OF MICHIGAN**
OFFICE OF THE GOVERNOR
**LANSING**

JAMES J. BLANCHARD
GOVERNOR

January 24, 1984

Mr. Carl A. Corrallo
U. S. Department of Energy, RG-30
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20461

Dear Mr. Corrallo:

The Economic Regulatory Administration (ERA) issued a notice on January 31, 1983, regarding oil overcharge escrow funds distributed to states as provided for in Public Law 97-377 § 155. This letter is to provide, as requested in the notice, the notification on how these funds were used.

The State of Michigan used the funds provided for under Section 155 entirely for the low income weatherization program, as provided for under Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U. S. C. § 6321 et seq. These funds were appropriated under Michigan Public Act 74 of 1983, dated June 6, 1983.

Should you require further information on the use of these funds, please contact Mr. Terry R. Black, Director of the Energy Administration, Michigan Department of Commerce, Post Office Box 30228, Lansing, Michigan 48909, phone (517) 373-9090.

Kind personal regards.

Sincerely,

JAMES J. BLANCHARD
Governor

[illegible]
Rec'd by [illegible]
1/27/84

**STATE OF MINNESOTA**
OFFICE OF THE GOVERNOR
**ST. PAUL 55155**

RUDY PERPICH
GOVERNOR

January 20, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

In compliance with the requirements of the Further Continuing Appropriations Act of 1983, I am writing to inform you that the $3,283,000 paid to the State of Minnesota on February 4, 1983 has been applied to the following programs:

$2,000,000 to the Weatherization program administered by the Department of Economic Security;

$943,000 to the Institutional Commercial Program administered by the Department of Energy and Economic Development and;

$340,000 to the Energy Extension Service Program administered by the Department of Energy and Economic Development.

In each case, the expenditure of these funds is progressing according to the original plan with program and financial status reports sent quarterly to the Department of Energy, Regional Office in Argonne, Illinois.

If you require additional information regarding these oil pricing funds, please contact Vickie Reph at (612)296-4874.

Sincerely,

Rudy Perpich

Rudy Perpich
Governor

AN EQUAL OPPORTUNITY EMPLOYER

**DEPARTMENT OF ENERGY & TRANSPORTATION**
Watkins Building, 510 George Street
Jackson, Mississippi 39202-3096
601/961-4733

December 12, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
U. S. Department of Energy
Washington, D. C. 39205

Dear Mr. Hanzlik:

Governor Winter has directed me to inform you as to the programs which have been or are to be funded by the payment of $2,379,200 made to the State of Mississippi from oil pricing funds collected by the Department of Energy and disbursed pursuant to the Further Continuing Appropriations Act of 1983.

Allocation of these funds was made to energy conservation programs defined under the following:

1. Part A of the Energy Conservation and Existing Buildings Act of 1976, 42 U.S.C. 6861 et seq (Weatherization) - $314,667
2. Part D of Title III of the Energy Policy and Conservation Act relating to primary and supplemental state energy conservation programs, 42 U.S.C. 6321 et seq (SECP) - $835,200
3. Part G of Title III of the Energy Policy and Conservation Act relating to energy conservation for schools and hospitals, 42 U.S.C. 6371 et seq (ICP) - $300,000
4. The National Energy Extension Service Act, 42 U.S.C. 7001 et seq (EES) - $300,000
5. The Low Income Home Energy Assistance Act of 1981, 41 U.S.C. 8621 et seq (LIEAP) - $629,333

If you have any questions concerning these programs or procedures, please contact Mr. H. B. Bryant at the above telephone number and address.

Very truly yours,

Wilbur G. Ball

Wilbur G. Ball
Executive Director

WGB:bnp

cy: H. B. Bryant

EXECUTIVE OFFICE
STATE OF MISSOURI
P.O. BOX 720
JEFFERSON CITY
65102

CHRISTOPHER S. BOND
GOVERNOR

December 12, 1983

Mr. Rayburn Hanzlik, Administrator
U.S. Department of Energy
Economic Regulatory Administration
1000 Independence Avenue, S.W.
Room 5B148
Washington, D.C. 20585

Dear Mr. Hanzlik:

As requested in your letter of November 23, 1983 and as required by Section 155 of the Further Continuing Appropriations Act of 1983, I am reporting that the $3,731,800 which was disbursed to Missouri was allocated as follows:

| | |
|---|---|
| Weatherization Assistance Program (WAP) (Part A: Energy Conservation and Existing Buildings Act of 1976) . . . . . . . . . . . | $2,231,800 |
| Institutional Conservation Program (ICP - Schools & Hospitals) (Part G: Title III, Energy Policy and Conservation Act) . . . . | 1,000,000 |
| State Energy Conservation Program (SECP) (Part D: Title III, Energy Policy and Conservation Act) . . . . . . . . . . . . | 500,000 |
| | $3,731,800 |

If you have questions or need additional information, please contact Al Pasini, Division of Energy, at (314) 751-4000.

Sincerely,

C Bond
GOVERNOR

aks:cn

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING

TED SCHWINDEN, GOVERNOR
STATE CAPITOL
STATE OF MONTANA
(406) 444-3616
HELENA, MONTANA 59620

January 3, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

In response to your letter to Governor Schwinden dated November 23, 1983, regarding oil pricing funds provided the State of Montana, I am providing the following per your request.

Of the $867,800 made available to Montana, we have distributed the funds in the following manner:

| | | |
|---|---|---|
| $500,000 | - | Department of Social and Rehabilitation Services Low Income Energy Assistance Program (LIEAP). |
| $367,800 | - | Department of Natural Resources and Conservation Institutional Building Grant Program (IBGP). |
| $867,800 | - | TOTAL |

If you have any further questions regarding the distribution of these funds, please do not hesitate to contact me.

Sincerely,

Dave Lewis

DAVID M. LEWIS
Budget Director
Office of Budget and Program Planning

cc: David Wanzenried, Executive Assistant
Office of the Governor

U. S. Department of Energy

BILL3:U/1

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF NEBRASKA
**ROBERT KERREY • GOVERNOR**

December 15, 1983

Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, DC 20585

Dear Mr. Hanzlik:

I have designated expenditures of oil pricing funds in the following amounts to eligible federal programs under the provisions of the Further Continuing Appropriations Act of 1983:

| | |
|---|---|
| Energy Policy and Conservation Act | $577,400 |
| National Energy Extension Service Act | $800,000 |

Detailed plans for expenditure of these funds are or will be on file with the proper federal authorities.

I trust this is the information you seek. If I may be of further assistance, please let me know.

Sincerely,

Bob Kerrey

Robert Kerrey
Governor

RK:khg

OFFICE OF THE GOVERNOR, BOX 94848, LINCOLN, NEBRASKA 68509-4848, PHONE (402) 471-2244
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27611

JAMES B. HUNT, JR.
GOVERNOR

December 21, 1983

Dear Mr. Hanzlik:

This is in response to your letter of November 23, 1983 in which you pointed out the statutory requirement for reporting the disposition of $4,310,600 awarded to the State of North Carolina pursuant to the Further Continuing Appropriations Act of 1983. The funds in question have been allocated as follows:

| | |
|---|---|
| Low-Income Weatherization Program | $1,250,000 |
| Institutional Building Conservation Program | 1,560,600 |
| State Energy Conservation Program | 732,000 |
| Energy Extension Service | 768,000 |
| | $4,310,600 |

A detailed description of the programs and program measures supported by these funds has previously been forwarded to the Atlanta Support Office (DOE).

If I can be of further assistance, please don't hestitate to contact me or the North Carolina Department of Energy Division Director, Mr. Doug Culbreth at 919 733-2230.

My warm personal regards.

Sincerely,

Jim Hunt

Mr. Rayburn Hanzlik, Administrator
Economic Regulatory Administration
Department of Energy
Washington, D. C. 20585

State of North Dakota
EXECUTIVE OFFICE
BISMARCK

ALLEN I. OLSON
GOVERNOR

November 17, 1983

Mr. Donald Hodell, Secretary
U.S. Department of Energy
Forrestal Building, Room 7A-257
1000 Independence Avenue
Washington, D.C. 20585

Dear Mr. Hodell:

You are hereby informed that the funds dispersed to the State of North Dakota under Section 155 of PL 97-377 (Petroleum Violation Escrow Funds) will be applied to the State's Low Income Home Energy Assistance Program. The funds will be used to supplement North Dakota's FY'84 Low Income Home Energy Assistance Program allotment and will be expended in accordance with the provisions of PL 97-35, and the State's FY'84 LIHEAP application and Plan.

The North Dakota Department of Human Services has been designated to administer the Low Income Home Energy Assistance Program. Further communication related to program operations should be addressed to:

Lawrence M. DeBilzan, Administrator
Low Income Home Energy Assistance Program
Department of Human Services
State Capitol
Bismarck, North Dakota 58505

Sincerely,

Allen I. Olson

ALLEN I. OLSON

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR
STATE HOUSE · CONCORD, NEW HAMPSHIRE 03301

JOHN H. SUNUNU
GOVERNOR

February 1, 1984

Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

In February 1983, New Hampshire received $890,400 from oil pricing funds collected by the U. S. Department of Energy. Said funds were disbursed under the Further Continuing Appropriations Act of 1983.

Per a statutory requirement under this Act, enclosed please find information specifying where the funds have been applied and a description of the programs. The money has been disbursed as follows:

| | | |
|---|---|---|
| State Energy Conservation Plan (SECP) | | |
| Small Business Buy-down Program | $150,000 | |
| SECP Outreach Activities | 125,000 | |
| Solar Energy Educational and Promotional Efforts | 20,200 | $295,200 |
| Weatherization | | 595,200 |
| TOTAL | | $890,400 |

If additional information is required, please contact Dennis Hebert, Director of the Energy Office, at 603-271-2711.

Sincerely,

John H. Sununu
John H. Sununu
Governor

JHS:lms
jmk

## Small Business Interest
## Buy-down Program

Object:

To encourage small businesses to invest in energy conservation measures by offering loans at substantially reduced interest rates.

Method:

I believe that banks could be persuaded to offer energy conservation loans of a maximum of $15 - $25 thousand dollars to their small business customers at standard market rates which we would buy-down to 4 - 6 percent. Our funds (Warner Amendment) should be deposited in escrow accounts in each participating bank which would be drawn down to meet the interest payments automatically each month.

Requirements:

A Technical Assistance audit should be required of the clients before they receive the lowered interest loans. It should be possible to work through the Institutional Conservation Program Technical Assistance format by eliminating the requirements for Preliminary Energy Audits and Energy Audits, but using the approved Technical Assistance auditors.

## State Energy Conservation Plan

### Outreach Activities

Objective:

Provide educational and outreach materials and activities to promote conservation and renewable energy programs for New Hampshire residents.

Method:

1) Produce film profiling New Hampshire's current energy position. This film would be shown at presentations and energy fairs, as well as aired on TV.
2) Conduct hands-on workshops for homeowners to acquaint them with proper procedures to implement energy conservation measures.
3) Hold conferences throughout the State for the general public and for those agencies and organizations involved with related energy issues.
4) Publish and print brochures and booklets for distribution to New Hampshire's citizens.
5) Expand the Energy Office reference library.

## PROMOTION OF SOLAR ENERGY

Objectives:

1) Maintain and expand solar outreach activities.
2) Provide direction to the building community for energy efficient retrofit improvements in building design and construction.
3) Supply building community with information on state-of-the-art techniques for energy efficient new construction and encourage demand for energy conscious buildings.
4) Work with the New Hampshire Solar Energy Associaton (NHSEA) to establish methods of promoting proven and cost-effective solar energy technologies.

Methods:

1) Sponsor monthly lecture series at the NH Vocational Technical College in Manchester which will focus attention on energy efficient construction. These lectures will feature State and regional authorities in the energy field to cover topics such as superinsulation, air-tight construction, new glazing and window materials and innovative heating systems.
2) Conduct workshops for the general public on the design and construction of solar water heating systems.
3) Print handout materials for distribution.
4) Buy advertising space in the NHSEA bi-monthly publication, The New Hampshire Sun. This publication reaches the building community and other members with information on energy efficient construction,

promotion of workshops and listings of upcoming lectures and seminars.

5) Sponsor a competition for New Hampshire students with energy projects, experiments and home designs.

6) Conduct a Statewide competition of low energy homes in order to focus attention on energy efficient construction practices which are currently available to the New Hampshire building community.

7) Print a publication for use by homeowners and builders on energy efficient building construction. Material will outline specific techniques which should be incorporated into this type of design.

1/31/84

## WARNER FUNDS

The Division of Human Resources received $445,200 in Warner Ammendment funds to be utilized in the State Weatherization Program. The funds were programmed into the Low-Income Home Energy Assistance Program and expended as HHS dollars.

The New Hampshire Weatherization Program (Funded through the E.B.G.) operates in accordance with D.O.E. Weatherization Assistance Program Regulations. In addition, New Hampshire has developed two component programs to supplement and expand upon basic weatherization services as defined by D.O.E. The two component programs are the Home Repair Program and the Heat Source Repair and/or Replacement Program.

The following chart illustrates how the $445,200 in Warner Funds were expended. (Please note N.H. has six subgrantee who deliver the program at the local level).

| Agency | Weatherization Services | Home Repair Program | Heat Source Repair Program |
|---|---|---|---|
| Southwestern Community Services | $ 46,746 | $ 7,791 | $ 7,791 |
| Rockingham County CAP | 46,746 | 4,900 | 10,682 |
| Strafford County CAP | 33,682 | 5,318 | 5,520 |
| Southern NH Services | 81,667 | 4,000 | 3,373 |
| Tri-County CAP | 73,458 | 12,243 | 12,243 |
| Belknap/Merrimack CAP | 66,780 | 11,130 | 11,130 |
| | $349,079 | $45,382 | $50,739 |

| Accomplishments | Average Expenditure |
|---|---|
| 411 Units Weatherized | $849.19 per unit |
| 76 Units Home Repair | 597.52 per unit |
| 65 Units Heat Source Repair | 777.20 per unit |

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
CN-001
TRENTON
08625

THOMAS H. KEAN
GOVERNOR

January 26, 1984

Honorable Rayburn Hanzlik
Economic Regulatory Administration
U.S. Department of Energy
Washington, DC 20585

RE: Disbursement Report
Oil Pricing Funds

Dear Mr. Hanzlik:

This report on the disbursement of the above captioned fund is submitted to the Department of Energy in fulfillment of the requirements of the Further Continuing Appropriations Act of 1983. All of the programs identified below were selected on the basis of achieving long-term energy conservation benefits to New Jersey.

Institutional Conservation Program - $1.0 million

This program provides grants to public and private schools, hospitals, public care institutions and local governments to assist them in reducing their energy consumption through implementation of energy conservation operating procedures and the installation of energy conservation measures. This program is being implemented by the New Jersey Department of Energy (NJDOE).

Commercial Light Industrial Energy and Technical Program (CLIENTS) - $2.3 million

This program provides a two phase energy conservation incentive system to local governments, commercial businesses, multi-family building owners and industrial plants. In the first phase, technical advisors perform energy audits and make conservation recommendations. In the second phase, conservation loan subsidies are provided for implementation of the audit recommendations. This program is being implemented by NJDOE.

Energy Conservation Improvements for Public Housing Authorities - $4.0 million

This program would provide energy conservation grants to the State's 73 local public housing authorities which provide housing for approximately 46,200 low income families. The grants would be used to implement energy conservation measures as recommended in a HUD Comprehensive Improvement Assistance Program. This program is being implemented by the New Jersey Department of Community Affairs.

Appliance Efficiency Program - $200,000

This program would promote energy conservation by offering an information service to persons and businesses on the benefits of using energy efficient appliances. It would also fund the administration of a public utility rebate program for those who purchase energy efficient appliances. This program is being implemented by NJDOE.

The above programs are eligible activities under the Institutional Conservation Program, Weatherization Program and State Energy Conservation Program. The State of New Jersey looks forward to continuing its strong level of cooperation with USDOE in the disbursement of these funds.

Sincerely,

Thomas H. Kean
Governor

**STATE OF NEW MEXICO**
OFFICE OF THE GOVERNOR
**SANTA FE**
87503

**TONEY ANAYA**
GOVERNOR

January 20, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

In accordance with the 1983 Further Continuing Appropriations Act, Public Law No. 97-377, New Mexico hereby submits a plan delineating the energy conservation programs to which the state will apply its share of Section 155 oil overcharge funds.

New Mexico has allocated all of its $1,191,400 oil-overcharge funds to four (4) federal programs, three (3) of which are run by the state's Energy and Minerals Department (EMD) and one of which is administered by the New Mexico Human Services Department (HSL). I feel both agencies have developed restitutionary schemes that are appropriate to repaying New Mexicans who were injured by purchasing over-priced petroleum products. The plan contained herein coincides with the State Energy Conservation Plan approved by DOE in July, 1983.

New Mexico will carefully monitor the progress of our plan and notify you of any changes in accordance with DOE Ruling 1983-1, Question/Answer #5 which permits reallocation of funds from one eligible program to another.

The following lists the amounts assigned to each program:

1) The Energy Extension Service (EES) Program, administered by EMD. Amount assigned: $191,750

    - Primarily, these funds will be used for promoting cost-effective, easily implemented conservation techniques and technologies in selected locations under EMD's Community Energy Alternatives Program. Also, a portion of this amount will be used for a demonstration project showing the applicability of energy conservation technology to residences and small businesses;

2) The Energy Policy and Conservation Act (EPCA) Program, administered by EMD. Amount assigned: $199,650

   - Most of these funds will be used to reduce interest rates charged by banks on loans made to finance the purchase and installation of solar measures for residential buildings;

   - A portion of these funds will be used to fund transportation, life-cycle costing analysis, public and private building programs;

3) The National Energy Conservation and Production Act (NECPA) Program, administered by EMD. Amount assigned: $300,000

   - To date, $223,774 has been committed to seven (7) schools for energy savings and cost-effective modifications; the remaining amount will be committed within a few months; and,

4) The Low-Income Home Energy Assistance (LIHEAP) Program, administered by HSD. Amount assigned: $500,000

   - Under the set-aside provision of LIHEAP, the HSD has allocated $250,000 for a solar retrofit program for low-income residences;

   - Also, $175,000 of these funds have been set aside to implement a furnace repair program for eligible LIHEAP recipients; and

   - Funds amounting to $75,000 have been earmarked for a supplemental weatherization project for LIHEAP residences.

Please feel free to contact Mr. Paul Biderman, Secretary of the Energy and Minerals Department, 525 Camino de los Marquez, Santa Fe, New Mexico, 87501, should you wish further information regarding New Mexico's plans for these monies.

Sincerely,

TONEY ANAYA
Governor

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

MICHAEL J. DEL GIUDICE
SECRETARY TO THE GOVERNOR

January 19, 1984

Dear Mr. Hanzlik:

Governor Cuomo has asked me to thank you for your November 23 letter and to provide the enclosed summary of New York State's disbursement of the appropriation of $15,363,400 of petroleum overcharge funds received on February 4, 1983. The New York State Energy Office and the Department of State received $13,863,000 and $1,500,400, respectively. The Department of State is using its appropriation to supplement the Federal Low-Income Weatherization Program.

A more detailed review of State Energy Office programs can be found in the EES and SECP grant requests mandated by the Department of Energy. If additional information is required, please contact the Commissioner of Energy, William D. Cotter, at the New York State Energy Office, 2 Rockefeller Plaza, Albany, New York 12223 or (518) 473-4376.

Sincerely,

Michael J. Del Giudice

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D. C. 20585

Enclosure

NEW YORK STATE ENERGY OFFICE
WILLIAM D. COTTER
COMMISSIONER

December 16, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

After reviewing the summary of New York State's appropriation of petroleum overcharge funds which was recently mailed to you by Governor Cuomo, I noted several minor errors. As a result, I have enclosed a revised summary.

My apologies for any inconvenience. If additional information is required, please feel free to contact me at (518) 474-4083 or at the address below.

Sincerely,

William P. Saxonis

William P. Saxonis
Assistant to the Director
Division of Conservation

WPS/pjr
Enclosure

TWO ROCKEFELLER PLAZA • ALBANY, NEW YORK 12223

Revised 12/16/83

## Appropriation of Petroleum Overcharge Funds in New York State

### Energy Extension Service

| | | |
|---|---|---|
| o Industrial, Commercial, Transportation Energy Conservation Programs | | |
| - Energy Advisory Service to Industry | $750,000 | |
| - Boiler Program | $250,000 | |
| - Small Business | $500,000 | |
| - Ridesharing | $500,000 | |
| - Fleet Management | $600,000 | Total - $ 2,600,000 |
| o Energy Conservation Outreach | | |
| - Communications | $ 65,000 | Total - $ 65,000 |
| o Residential Energy Conservation Programs | | |
| - Single Family | $281,500 | |
| - Multifamily | $553,500 | Total - $ 835,000 |
| o Public Buildings (community service facilities, state and local buildings, health care facilities, schools, etc.) | | |
| - On-Site Energy Audit Service | $500,000 | Total - $ 500,000 |

### State Energy Conservation Plan

| | | |
|---|---|---|
| o Residential Energy Conservation Programs | | |
| - Public & Publicly Assisted Housing | $1,500,400 | Total - $ 1,500,400 |

### Institutional Buildings Energy Conservation Program

| | | |
|---|---|---|
| - Institutional Buildings Grant Program | $5,000,000 | Total - $ 5,000,000 |

### Home Energy Assistance Program

| | | |
|---|---|---|
| - Energy Conservation Program for Low-Income Senior Citizens | $3,363,000 | Total - $ 3,363,000 |

### Weatherization Program for Low-Income Households

| | | |
|---|---|---|
| - The New York Department of State received $1,500,000 to supplement the Weatherization Program | | Total - $ 1,500,000 |
| | GRAND TOTAL | $15,363,400 |

THE STATE OF NEVADA
EXECUTIVE CHAMBER
*Carson City, Nevada 89710*

RICHARD H. BRYAN
*Governor*

TELEPHONE
(702) 885-5670

January 21, 1984

Rayburn Hanzlik, Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

In response to your letter of November 23, I would like to submit the attached accounting of oil pricing funds disbursed pursuant to the Further Continuing Appropriations Act of 1983.

Nevada's allocation of $773,400 will be disbursed primarily through the State Energy Conservation Program in the form of demonstration projects. Interest generated by the funds will be disbursed in the same manner as the initial award.

The Office of Community Services (OSC) is the agency designated for managing the oil pricing funds. OCS prepares projects and budgets for review by the State Budget Division. These projects are then reviewed by the Interim Finance Committee of the Nevada State Legislature. Projects selected for funding are those which will provide the maximum benefit to all Nevada citizens. The demonstrated energy savings are then used as incentives for further energy conservation projects within the state.

If you have any further questions regarding Nevada's program, please feel free to contact directly the Office of Community Services, 1100 E. William Street, Carson City, Nevada 89710.

Sincerely,

RICHARD H. BRYAN
Governor

RHB/cjr
Encl.

## WARNER FUNDS

(Summary Sheet)

Disbursed to Date

| | | |
|---|---|---|
| Nevada State Prison | $120,000 | |
| Low-cost Weatherization | 64,806 | |
| Public Works Board for No. NV Children's Home | 22,851 | |
| | | $207,657 |

Approved But Not Yet Disbursed

| | | |
|---|---|---|
| Low-cost Weatherization (balance) | $ 35,194 | |
| Public Works Board - So. NV Children's Home | 30,000 | |
| Office of Community Services - Energy Assistance | 89,250 | |
| Kinkead Building | 77,000 | |
| University of Nevada-Reno | 79,449 | |
| University of Nevada-Las Vegas | 96,000 | |
| Stewart Facility | * 214,850 | |
| | | $621,743 |
| TOTAL | | * $829,400 |

* Includes $56,000 interest income.

## SECP Demonstration Project Sheet

Nevada State Prison

| | | |
|---|---|---|
| Steam transmission insulation - insulate pipes. Total cost $40,000 materials only. One-half of cost to be charged to NSP utility budget. Energy savings of 8% of approximately $31,000 a year should be realized for a payback period of 1 1/4 years. (Maximum facility). | $ 20,000 | |
| Install computerized energy management system to regulate electrical appliances and motors in conjunction with communication system. Total cost is $317,382. Balance will be paid monthly over a period of four years. Electrical demand will be more efficient and overall consumption reduced. Approximately 10% or $80,000 a year on all three Northern Nevada facilities. Payback period of four years. | $100,000 | |
| Disbursed to date/total allocation | | $120,000 |

Low-cost Weatherization

Low-cost weatherization program for 2,500 households in low-income areas (water heater blankets, outlet gaskets, weatherstripping, caulking, etc.).

| | | |
|---|---|---|
| Disbursed to date | $64,806 | |
| Approved to disburse | 35,194 | |
| Total project | | $100,000 |

Public Works Board -
Northern Nevada Children's Home

Replace inoperable steam system with energy efficient plant. Total cost is $88,500.

| | |
|---|---|
| Disbursed to date/total allocation | $ 22,851 |

Public Works Board -
Southern Nevada Children's Home

Landscaping to achieve more efficient use of energy and water resources. Remove landscaping material which require large amounts of water; replace with desert style plants.

Approved but not yet disb./total allocation $30,000

Office of Community Services - Energy Assistance

Summer cooling program for elderly and handicapped households in Southern Nevada - 2,650 households. Total cost is $218,400.

Approved but not yet disb./total allocation $89,250

Kinkead Building

Seal window frames to eliminate moisture and controlled air leaks in buildings. $55,000

Heating and air conditioning modification; convert existing controls to improve efficiency of building. $22,000

Approved but not yet disb./total allocation $77,000

UNLV Lighting Project

The project for the UNLV campus consists of installing exterior lighting along the walkways leading to the gymnasium. The lighting chosen for this project will feature energy conservation technology, and provide adequate illumination with minimum operating cost. The project will be monitored, evaluated and documented so that it can serve as a demonstration project.

Approved but not yet disbursed $96,000

UNR Lighting Project and Boiler Modifications

The lighting project at UNR will include both new and replacement lighting for exterior use. The existing fixtures will be replaced with high efficiency lighting that meets state-of-the-art technology. The boiler retrofits are measures identified in a technical energy audit which will modernize the heating system and maximize operating efficiency. Suggested measures included: Installation of burner and $O_2$ control system; installation of $O_2$ indication system; installation of economizer in stack of new boiler; and installation of various ducts, blowers, and stack dampers. Project benefits will be identified and documented for use in demonstration of this technology.

| | |
|---|---|
| Approved but not yet disbursed | $ 79,449 |

Stewart Facility

The Stewart Indian School has been acquired by the State of Nevada and is being converted to public use including community college classroom facilities and vocational training rooms. The funds appropriated will be for energy-related activities including boiler modifications.

| | |
|---|---|
| Approved but not yet disbursed | $214,850 |

STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43215

RICHARD F. CELESTE
GOVERNOR

January 11, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

As required under the Further Continuing Appropriations Act of 1983, I wish to submit this report indicating the programs to which the State of Ohio has applied its $7,117,000 oil pricing funds. Ohio's funds will be distributed among the following programs:

-The programs under Part D of Title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs) (42 U.S.C. 6321 and following).

State Energy Conservation Plan total = $2,500,000

-The program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following).

Home Weatherization Assistance Program = $3,612,000

-The program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

Energy Extension Service total = $1,005,000

If you require any additional information, please contact Bill Whitney at (614)466-3465.

Sincerely,

Richard F. Celeste

RICHARD F. CELESTE
Governor

cc: Bill Whitney
Community Development Division
Department of Development

STATE OF OKLAHOMA
OFFICE OF THE GOVERNOR
OKLAHOMA CITY

GEORGE NIGH
GOVERNOR

June 10, 1983

Mr. Donald Paul Hodel
Secretary of Energy
The U.S. Department of
Energy
Washington, D.C. 20585

Dear Secretary Hodel:

The State of Oklahoma is pleased to share in the first allocation of petroleum violation escrow funds. The funds come at a time when many needy persons will welcome such assistance.

It is the intention of the State of Oklahoma to follow the law and applicable federal regulations regarding the administration of the funds.

We plan to disburse Oklahoma's allocation to supplement the following programs, as set out by the regulations.

The Oklahoma Corporation Commission shall receive and administer a total of $435,000 to supplement the funds for energy conservation programs that have been administered heretofore by the commission. To complete the schools audit portion of the State Energy Conservation program, $225,000 will be applied. The Energy Extension Service Program will receive $60,000. The State Energy Conservation Program will receive $150,000.

The Oklahoma Department of Human Services will receive and administer a total of $1,254,630 to supplement the LIHEAP program. The Indian set aside portion shall be allocated to the Oklahoma Indian Affairs Commission, to administer their share in cooperation with the Department of Human Services.

The Oklahoma Department of Economic and Community Affairs will receive and administer a total of $675,570 to supplement the Low Income Weatherization Program. The State of Oklahoma will insure that the eligible Native Americans will share equitably in the benefits provided with escrow funds in the same manner that

OKLAHOMA
CARING AND SHARING

the Department of Economic Affairs has provided such assistance under the Low Income Weatherization heretofore.

In electing to accept the responsibility of the program, I want to express my appreciation for the assistance and cooperation of your office. I look forward to continuing that relationship with your office as further allocations become available to the many needy citizens of the State of Oklahoma.

Sincerely,

George Nigh

GN/SM

VICTOR ATIYEH
GOVERNOR

*Department of Energy*

LABOR & INDUSTRIES BUILDING, ROOM 102, SALEM, OREGON 97310 PHONE 378-4040

November 4, 1983

Donald M. Hodel, Secretary
U.S. Department of Energy
Forrestal Building
1000 Independence Ave., S.W.
Washington D.C. 20585

Dear Mr. Secretary:

Section 155 of the Further Continuing Appropriations Act of 1983, provided petroleum overcharge escrow funds to the States for implementation of existing federally-funded energy conservation and renewable resource programs. The programs included: a) the State Energy Conservation Plan, b) Energy Extension Service, c) Institutional Buildings Program, d) Low Income Weatherization, and e) Low Income Fuel Assistance.

Section 155 also directs each state to report to US DOE within one year how the funds will be distributed. Oregon's share of the distribution was $1,962,200. The 1983 Oregon Legislature provided us with direction on how to distribute these funds. The information provided below on how the funds will be disbursed is intended to provide the Secretary with the notification required by Section 155.

| | |
|---|---|
| $455,661 | Oregon Department of Environmental Quality for energy conservation programs including waste oil, recycling, wood-burning stoves and solid waste. |
| $259,933 | Oregon Department of Water Resources for evaluation of small hydroelectric projects and low-temperature geothermal wells. |
| $171,020 | Portland Energy Savings Center for energy conservation programs in the City of Portland. |
| $165,101 | Oregon Department of Geology and Mineral Industries for energy resource exploration studies. |
| $25,887 | Oregon Department of Energy to help implement a low-income residential weatherization program funded by the U.S. Department of Housing and Urban Development. |

| | |
|---|---|
| $81,000 | Portland Energy Savings Center to market and implement a low-income residential weatherization program funded by the U.S. Department of Housing and Urban Development. |
| $803,598 | For energy efficiency improvements in publicly-owned buildings. |

Pursuant to the guidance in Section 155 and the supplemental guidance provided by the U.S. Department of Energy in its interpretations on Section 155, we will be amending our State Energy Conservation Plan and, if appropriate, state grant applications for other federal programs, to reflect the increased funding levels in the program activities listed above.

If you desire additional information, please contact Larry Gray, Assistant Administrator of the Conservation Division at 503-378-8607, or David Kish, Administrator of the Budget and Administrative Services Division at 503-378-8442.

Sincerely,

Michael W. Grainey
Deputy Director

MWG:sb
40361 (d2,f2)

cc: David K. Jones, Chief
State and Local Assistance Programs Branch
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
HARRISBURG

ROBERT A. BITTENBENDER
SECRETARY
OFFICE OF THE BUDGET

December 12, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

Your correspondence to Governor Dick Thornburgh of November 23, 1983 concerning funds dispersed by the Secretary of Energy under Section 155 of the Further Continuing Appropriations Act, 1983, has been referred to me for response.

On July 21, 1983, Governor Thornburgh signed Pennsylvania Act No. 7-A, the Supplemental General Appropriation Act for the Fiscal Year 1983-84, which appropriates funds dispersed by the Secretary of Energy under Section 155 of the Further Continuing Appropriations Act, 1983, as follows:

| | | |
|---|---|---|
| Low Income Energy Assistance - Weatherization | | $ 3,533,000 |
| Institutional Conservation Program | | 3,533,000 |
| Energy Extension Services | | 850,000 |
| State Energy Conservation Program | | 750,000 |
| Low Income Energy Assistance | | 500,000 |
| | Total | $ 9,166,000 |

Please do not hesitate to contact me if you have any additional questions on this issue.

Sincerely,

Robert A. Bittenbender

Robert A. Bittenbender

State of Rhode Island and Providence Plantations
EXECUTIVE CHAMBER, PROVIDENCE

J. Joseph Garrahy
*Governor*

December 29, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, DC 20585

Dear Mr. Hanzlik:

I am writing in response to your letter of November 23, regarding Section 155 of the Continuing Appropriations Act of 1983 under which Governors must identify to the Secretary of Energy within one year of the disbursement of funds to the States the energy conservation programs to which the funds will be applied.

I am forwarding to you for your information a copy of my letter of March 9 to Secretary Hodel informing him of the programs funded by the State of Rhode Island and its allocation of funds under Section 155 of the Further Continuing Appropriations Act. I am also enclosing a copy of Secretary Hodel's response of April 8 to my letter of notification. I trust that we are in order.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

J. Joseph Garrahy

J. Joseph Garrahy
GOVERNOR

Enclosures

State of Rhode Island and Providence Plantations
EXECUTIVE CHAMBER, PROVIDENCE

J. Joseph Garrahy
*Governor*

March 9, 1983

The Honorable Donald Paul Hodel
Secretary of Energy
Department of Energy
Washington, DC 20585

Dear Mr. Secretary:

Pursuant to Section 155 of the Further Continuing Appropriations Act of 1983, (Public Law No. 97-377), I am writing to notify you of the energy conservation programs to which Rhode Island's share of oil company price control violation settlement rebate funds will be used. The sum of $766,400 has been disbursed to Rhode Island under Section 155 and will be allocated as follows:

1. The sum of $150,000 to provide emergency shelter for the homeless under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C., 8621 and following).
2. The sum of $200,000 to help low-income families with their winter heating bills under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C., 8621 and following).
3. The sum of $200,000 to weatherize the homes of poor families under Part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following).
4. The sum of $216,400 for demonstration weatherization projects in state buildings under the National Energy Service Act (42 U.S.C. 7001 and following).

Sincerely,

J. Joseph Garrahy

J. Joseph Garrahy
GOVERNOR

MAR 17 1983

State of South Carolina

Office of the Governor

RICHARD W. RILEY
GOVERNOR

POST OFFICE BOX 11450
COLUMBIA 29211

December 5, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
United States Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

As requested by your letter of November 23, I am reporting, on behalf of the State of South Carolina, the following allocations of the oil pricing funds collected by the United States Department of Energy and disbursed pursuant to the Further Continuing Appropriations Act of 1983:

| | |
|---|---|
| $1,700,000 | State Energy Conservation Program for energy survey/audits of state government buildings. Operated by the State Energy Programs Office, South Carolina Energy Research and Development Center, Clemson University. |
| $ 416,800 | State Energy Conservation Program for programs to foster and encourage the use of alternate energy resources. |
| $ 110,000 | Energy Extension Service program in South Carolina through June, 1984, operated by S.C. Technical Education Board. |

83 DEC 8 P12:50

[illegible]

| | |
|---|---|
| $ 110,000 | Weatherization Assistance program operated by South Carolina Governor's Office, Economic Opportunity Division |

Sincerely,

David M. Reid

David M. Reid
Executive Assistant

DMR:mc

cc: Max Nesbitt
Don Hinson
John Clark
Lee Spratt
Charles Hester

1889

STATE OF SOUTH DAKOTA
EXECUTIVE OFFICE

WILLIAM J JANKLOW
GOVERNOR

November 14, 1983

The Honorable Donald Paul Hodel
Secretary of Energy
U.S. Department of Energy
Washington, D.C. 20585

Dear Secretary Hodel:

This letter is to inform you that the State of South Dakota intends to use its share of the petroleum violation escrow funds dispersed under Section 155 of the Further Continuing Appropriations Act, Fiscal Year 1983, for activities under the State Energy Conservation Program (SECP). The Section 155 funds shall be used to supplement, and not supplant, funds otherwise available.

If you have any further questions regarding South Dakota's energy programs contact Mr. Dana Nelson, Director, Office of Energy Policy, State Capitol, Pierre, South Dakota 57501, or me.

Sincerely,

Bill

STATE CAPITOL BUILDING, PIERRE, SOUTH DAKOTA 57501 ● (605) 773-3212

1889

STATE OF SOUTH DAKOTA
EXECUTIVE OFFICE

WILLIAM J JANKLOW
GOVERNOR

December 19, 1983

Mr. Raybun Hanzlik, Administrator
Economic Regulatory Administration
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

This letter is to inform you that the State of South Dakota has determined that its share of the petroleum violation escrow funds dispersed under Section 155 of the Furtner Continuing Appropriations Act, Fiscal Year 1983, will be used for activities under the State Energy Conservation Program (SECP). The Section 155 funds shall be used to supplement, and not supplant, funds otherwise available.

If you have any further questions regarding South Dakota's energy programs contact Mr. Jeff Stroup, Commissioner, Bureau of Intergovernmental Relations, State Capitol, Pirre, South Dakota 57501.

Sincerely yours,

Bill

STATE CAPITOL BUILDING PIERRE, SOUTH DAKOTA 57501 ● (605) 773 3212

**STATE OF TENNESSEE**
**DEPARTMENT OF FINANCE AND ADMINISTRATION**
**STATE CAPITOL, NASHVILLE, TENNESSEE 37219**

**HUBERT L. McCULLOUGH**
**COMMISSIONER**

February 1, 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D. C. 20585

Dear Mr. Hanzlik:

Pursuant to the requirements of the Further Continuing Appropriations Act of 1983, I am reporting on the amounts allocated to various eligible programs using $3,171,400 from oil pricing funds disbursed to the state of Tennessee on February 4, 1983.

The information below summarizes the state agency responsible, the programs involved and the amount of funds allocated to each program.

| Federal Program Title | State Program Title | Funding |
|---|---|---|
| Energy Extension Service | State Building Energy Management | $1,000,000 |
| | State Employee Van Pool | 121,400 |
| | | $1,121,400 |
| Energy Conservation for Institutional Buildings | Institutional Conservation Program | $ 850,000 |
| Weatherization Assistance for Low-Income Persons | Weatherization Program | $ 300,000 |
| Low-Income Home Energy Assistance | Low-Income Energy Assistance | $ 900,000 |
| | | $3,171,400 |

This report is in response to your letter of November 23, 1983, to Governor Alexander. If you have any questions regarding this information, please contact Gerald Adams at (615) 741-2401.

Sincerely,

Hubert L McCullough

Hubert L. McCullough
Commissioner

HLM:bt

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

MARK WHITE
GOVERNOR

November 9, 1983

Dear Secretary Hodel:

The Texas State Legislature has determined that the Petroleum Violation Escrow Funds distributed by Congress under Section 155 of the Further Continuing Appropriations Act, Fiscal Year 1983, will be applied to eligible energy conservation programs as follows:

| | |
|---|---|
| Energy Crises Intervention Program | $4,000,000 |
| Weatherization of Public Housing Units | 4,000,000 |
| Low-Income Weatherization Program | 4,000,000 |
| Institutional Conservation Program and State Energy Conservation Program | 5,073,600 |

The state legislature appropriated these funds for the biennium beginning September 1, 1983, in Article V, Section 81, General Appropriations Act for 1984/85 Fiscal Year (Acts, 68th TX. Leg. R.S., S.B. 179, 1983). The funds will be used to supplement, and not supplant, funds otherwise available for such programs under federal or state law.

We appreciate the opportunity to work with you and your staff in administering energy programs which will help benefit consumers in this state injured by these and other petroleum overcharges. Please let me know if you require any further information.

Yours truly,

Mark White

Mark White
Governor of Texas

The Honorable Donald P. Hodel
Secretary of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D. C. 20585

MW:pa

STATE OF UTAH
NATURAL RESOURCES
Utah Energy Office

Scott M. Matheson, Governor
Temple A. Reynolds, Executive Director
E. James Bradley, Division Director

3266 State Office Building • Salt Lake City, UT 84114 • 801-533-5424

December 12, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

In accordance with your letter of November 23, 1983 to Governor Matheson, I would like to take this opportunity to inform you of how the oil pricing funds (Warner Amendment funds) have been allocated in the state of Utah. The $1,123,000 received was allocated as follows:

| | |
|---|---|
| State Energy Conservation Program (SECP) | $150,000 |
| Energy Extension Service (EES) | $473,000 |
| Institutional Conservation Program (ICP) | $500,000 |

These funds are contributing significantly to Utah's conservation and renewable resource activities. If you have any questions regarding these activities, please feel free to contact me.

Sincerely,

E James Bradley

E. James Bradley
Director

EJB:kj

cc: Denver DOE
Governor Matheson

STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE
120 STATE STREET
STATE OFFICE BUILDING
MONTPELIER 05602
TEL. 802 828-2811

January 27, 1984

Rayburn Hanzlik, Administrator
Economic Regulatory Administration
Department of Energy
Washington, D. C. 20585

Dear Mr. Hanzlik:

Governor Richard A. Snelling has asked me to respond to your letter regarding the disbursement of $457,600 in oil pricing funds to the State of Vermont.

The programs which are being funded in Vermont by the $457,600 section 155 oil overcharge money are the Low Income Weatherization Program and the Energy Extension Service Program. The $457,600 has been divided equally between the two programs.

If you need any further information, please let me know.

Thank you.

Sincerely,

Richard H. Saudek
Commissioner

bp

COMMONWEALTH of VIRGINIA

*State Office of Emergency and Energy Services*

H. KIM ANDERSON
State Coordinator
A. E. SLAYTON, JR.
Deputy Coordinator

310 Turner Road
Richmond, Virginia 23225-6491
(804) 323-2899

January 26, 1984

Mr. Rayburn Hanzlik, Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

As Governor Robb's designee for receiving oil overcharge funds, I am responding to your request of November 23, 1983 regarding the status of the Warner and overcharge monies. The following is a brief description of the programs that have been or will be funded with these monies:

I. Low Income Home Energy Assistance ($4,075,400):

The entire amount was expended for clients fuel benefits authorized for the FY 82-83 program.

II. Energy Extension Service ($450,000):

- 270,000 - Engineering Analysis of Individual State Buildings to Identify Ways to Reduce Energy Costs. The funds will be used to perform engineering examinations of buildings belonging to approximately 25 state agencies and institutions. This will be accomplished through the establishment of a working group which implements conservation techniques to control energy costs in state facilities. At this time the funds have been allocated and accepted by the Commonwealth of Virginia, Department of General Services.
- $150,000 - Energy Audits of Local Governments and Public Schools. The money has been expended for energy audits of 290 local government buildings and 70 public schools.
- $30,000 - Energy Audits of Virginia National Guard Armories. All the funds have been expended for the energy audits for Virginia's 40 armories.

III. Schools and Hospitals (ICP) - $530,000:

$241,000 of the $530,000 has been obligated in Cycle V for energy audits and energy conservation measures in Virginia's schools and hospitals. The balance will be obligated in Cycle VI.

IV. State Energy Conservation Plan (SECP) - $20,000:

General Study of Ways to Contain Energy Costs in State Facilities. This will provide support for a limited study which will recommend an appropriate level of effort directed at containing energy costs in state facilities. At this time, approximately $10,000 has been expended on the project. The balance is expected to be expended over the coming year.

I hope the above information provides a satisfactory description of the status of the Warner funds. If you have any additional questions, please feel free to contact me at (804) 323-2897.

Sincerely,

A. E. Slayton

Addison E. Slayton, Jr.
Acting State Coordinator

AESjr./MGF/tbd

cc: The Honorable Charles S. Robb
The Honorable Andrew B. Fogarty
The Honorable Joseph L. Fisher

JOHN SPELLMAN
Governor

RICHARD H. WATSON
Director

STATE OF WASHINGTON
WASHINGTON STATE ENERGY OFFICE
*400 E. Union, 1st Floor, ER-11 • Olympia, Washington 98504 • (206) 754-0700*

January 5, 1984

Mr. Rayburn Hanzlik, Administrator
Economic Regulatory Administration
U. S. Department of Energy
Washington, D.C. 20585

Re: WSEO 82-18 — Section 155 Funds

Dear Mr. Hanzlik:

On behalf of the Governor of the state of Washington and in compliance with your letter of November 23, 1983, and Section 155 of the federal Further Continuing Appropriations Act of 1983, the state of Washington is herewith submitting the required report on the $3,115,800 received in oil settlement funds. These funds have been or will be expended under the regulations and guidelines of the following four federal energy programs:

| | | |
|---|---|---|
| 1. | The program under the Low Income Home Energy Assistance Act of 1981, 42 U.S.C., §§8621 et seq. | $1,683,943 |
| 2. | The programs under Part D of Title III of the Energy Policy and Conservation Act (relating to primary and supplemental state energy conservation programs), 42 U.S.C., §§6321 et seq. | 1,177,357 |
| 3. | The program under Part G of Title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals), 42 U.S.C., §§6371 et seq. | 247,000 |
| 4. | Programs under the National Energy Extension Service Act, 42 U.S.C., §§7001 et seq. | 7,500 |
| | Total | $3,115,800 |

If you have any questions, do not hesitate to contact me at (206) 754-0701.

Sincerely,

Richard H. Watson
Director

DS/sat
Df-L6-24

cc: David Jones, DOE, Richland

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

December 27, 1983

Dear Mr. Hanzlik,

Thank you for your letter dated November 23, 1983 concerning the oil pricing funds collected by the Department of Energy and disbured pursuant to the Further Continuing Appropriation Act of 1983. As you are aware, I allocated 100% of the $1,168,800 West Virginia received to the Weatherization Assistance Program.

The funds have been contracted with the DOE funded weatherization agencies for the 1983 program year, from April 1, 1983 through March 31, 1984. No Section 155 funds are being used for administrative expenses at the State and subgrantee level. We anticipate 1,024 homes will be weatherized with the funds.

Future allocations may be directed to different program uses depending upon conditions prevailing at that time. However, under no circumstances will the funds be used to supplant funds otherwise available for such programs under Federal or State law.

Should you have any questions or need additional information please contact me.

Sincerely,

John D. Rockefeller IV

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
United States Department of Energy
Washington, D.C. 20585

State of Wisconsin
Office of the Governor

Anthony S. Earl

January 13, 1984

Administrator
Economic Regulatory Administration
Department of Energy
1000 Independence Avenue S.W.
Washington, D.C. 20585

Dear Sir,

The February 4, 1983 payment to the State of Wisconsin of $3,341,000 from oil pricing funds collected by the Department of Energy was disbursed in three of the five specified programs as follows:

| | |
|---|---|
| Low Income Home Energy Assistance Program | $2,900,000 |
| Institutional Conservation Program | 271,000 |
| State Energy Conservation Program | |
| Evaluation of the State's Low Income Weatherization Programs | 100,000 |
| Renewable Energy Engineer (Salary for two years) | 70,000 |
| | $3,341,000 |

The two projects in the State Energy Conservation Program were chosen for the following reasons:

- Because Wisconsin's low income weatherization programs have received substantial funding and are of such importance, it is good government and program management to ascertain whether the most efficient delivery mechanism and the most effective weatherization measures are in use.
- The State of Wisconsin has allocated $385,000 for installation and maintenance of renewable resource systems in state-owned buildings, but no money was allocated for appropriate staff. Hiring a renewable resources engineer has made it possible to use this money for the purpose intended.

State Capitol
P.O. Box 7863
Madison, WI 53707-7863
608-266-1212

> The use of cost-effective renewable resources is very important in Wisconsin, which imports 96 percent of its energy and exports over $6 billion annually to pay for it.

If you have any questions about the allocation of this money, please contact Roy Christianson, Administrator, Division of State Energy, Department of Administration, at 608/266-7257.

Sincerely,

Anthony S. Earl

Anthony S. Earl
GOVERNOR

ASE/kr

cc Doris Hanson, DOA Secretary

WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

ED HERSCHLER
GOVERNOR

December 12, 1983

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

In reply to your letter of November 23, 1983, concerning the distribution of oil pricing funds disbursed pursuant to the Further Continuing Appropriations Act of 1983, Wyoming's share of $783,200 was assigned to the following programs:

| | |
|---|---|
| ICP | $200,200 |
| Weatherization | $300,000 |
| LIEAP | $283,000 |

It is my understanding that your office will inform our DOE support office in Denver of this distribution.

Sincerely,

EH:pak

cc: Energy Conservation Office

AMERICAN SAMOA GOVERNMENT
OFFICE OF THE GOVERNOR
PAGO PAGO, AMERICAN SAMOA 96799

PETER TALI COLEMAN
Governor

TUFELE LI'A
Lt. Governor

December 14, 1983

Serial: 1050

TERRITORIAL ENERGY OFFICE,
Date Received: 12-19-83
Rec'd by:

Mr. Rayburn Hanzlik, Administrator
Economic Regulatory Administration
U. S. Department of Energy
Washington, D.C. 20585

Subject : Use of petroleum escrow funds

Dear Mr. Hanzlik:

As requested by your letter of November 23, 1983, this advises that the $33,000 paid to American Samoa is being used in our Energy Extension Services Program (EES) administered by the Territorial Energy Office.

It is my understanding that the EES is one of the authorized programs to utilize these funds. Accordingly, the Territorial Energy Office has prepared plans for the use of these funds on instructions received from the San Francisco Operations Office of DOE. Specifically, our plans call for the demonstration of commercially available energy technologies and the evaluation of their applications in our island territory, and secondly, the provision of off-island technical assistance that are critically needed on these energy programs.

DOE has approved our EES Plan and a copy of it can be obtained from the San Francisco Operations Office. Should you have any questions, please contact Mott T. Le'i, Director, Territorial Energy Office, for further information.

Sincerely,

Peter T. Coleman

PETER TALI COLEMAN
Governor

cc: Martha Dixon, SAN Operations Office
Director, Territorial Energy Office

**TERRITORY OF GUAM**
**OFFICE OF THE GOVERNOR**
**AGAÑA, GUAM 96910**
**U.S.A.**

**RICARDO J. BORDALLO**
**GOVERNOR**

JAN 11 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

This letter is Guam's official notification of the disposition of Oil Pricing Overcharge funds, received on February 1, 1983.

We have taken some time to decide the most beneficial manner in which the funds could be returned to the injured parties, and have decided to use the funds under our State Energy Conservation Plan, Energy Extension Services, and Institutional Conservation Program.

With these funds, we plan to employ the maximum number of people who can benefit, and at the same time accomplish the goals of our energy programs.

If further information is needed, please contact Dr. Douglas R. Smith, Director of the Guam Energy Office.

Sincerely yours,

RICARDO J. BORDALLO

Commonwealth of the Northern Mariana Islands
Office of the Governor
Saipan, Mariana Islands 96950

FOR OFFICIAL USE
CABLE ADDRESS
GOV. NMI SAIPAN
REPLY TO

DEPT or ACTIVITY

FEB 0 2 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

Further to my letter of January 20, 1984, in reply to your letter of November 23, 1983, I am glad to let you know that the FY84 Energy Extension Services Plan, which includes the $17,000 funding under Section 155, has been finalized and is now being implemented.

A progress report is enclosed.

Sincerely,

PEDRO P. TENORIO
Governor

Encl.

Commonwealth of the Northern [illegible]
Governor

GOV. NMI [illegible]
REPLY TO:

Commonwealth of the Northern Mariana Islands

## ENERGY EXTENSION SERVICES
(Section 155)

## PROGRESS REPORT
(January 31, 1984)

Under the EES program, the Commonwealth of the Northern Mariana Islands has developed the Biogas Digester project at As Lito Agricultural Station, converting the wastes from a piggery into a flammable gas containing two-thirds methane ($CH_4$). For demonstration purposes, the gas is used to boil water and will soon be connected to a specially designed plant to generate electricity.

The next phase of the project, now being funded under Section 155, is to use the effluent from the biogas digester to produce algae in ponds and tanks. The algae, under warm and bright conditions obtained in our tropical islands, use carbon dioxide from the air to grow while releasing oxygen to purify the effluent by converting the organic content of the wastes into minerals, which in turn are used by the algae as fertilizer to grow rapidly. To enhance the algae production, air is blown into the liquid to prevent stagnation and accelerate oxidation. The same effect is also obtained by letting the liquid from the algae pond or basin run as a thin film on the roof of the piggery during bright sunshine.

The algae also have another valuable property: that of fixing nitrogen from the air. This makes algae a high protein livestock feed that can replace expensive feed imports and encourage more livestock enterprises in our islands.

In this project, the algae will be used directly to feed the digester to improve the biogas production through increase of the carbon/nitrogen ration; indirectly to produce ethanol for use in vehicles; or harvested centrifugally in a small skimming machine and mixed with local ingredients to improve livestock feed. All the power required for these operations will be provided from the existing biogas plant.

The ethanol operation and the livestock feed trial are done under other EES projects. The algae project, which is funded under Section 155, will be operational by June 30, 1984. The $17,000 will be used as follows:

| | |
|---|---|
| Five algae tanks (6' dia. x 2') @ $600.00 | $ 3,000 |
| Five algae tanks (6' dia. x 3') @ $700.00 | 3,500 |
| Clear cover for tanks | 1,000 |
| 2,000 feet algae basin (2' x 6") @ $2.00 | 4,000 |
| Compressor (5 HP) | 1,000 |
| ½" PVC diffusers | 1,000 |
| 2 pumps with motors (2 HP) | 500 |
| PVC piping to piggery roof with gutter and downpipe | 1,000 |
| Centrifugal skimmer with piping | 1,000 |
| Biogas generator | 1,000 |
| TOTAL | $17,000 |

Commonwealth of the Northern Mariana Islands
Office of the Governor
Saipan, Mariana Islands 96950

FOR OFFICIAL USE
CABLE ADDRESS
GOV. NMI SAIPAN
REPLY TO

DEPT. or ACTIVITY

JAN 20 1984

Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration
Department of Energy
Washington, D.C. 20585

Dear Mr. Hanzlik:

With reference to your letter of November 23, 1983, I am glad to let you know that the $17,000 from oil pricing funds collected by the Department of Energy will be used in the Energy Extension Services (EES) program.

The funds will be used to purchase equipment for demonstration projects under the EES program (please see enclosed budget sheet). The equipment will be used for biofuel demonstration projects: culture of algae in ponds and tanks for use as raw materials to produce biogas and ethanol, and for trial as high protein livestock feed, which is energy-related. A progress report will be submitted by February 4, 1984.

Sincerely,

PEDRO P. TENORIO
Governor

Enclosure

cc: CNMI Resident Representative to the United States

## PART III - BUDGET INFORMATION REVISED DECEMBER 1983

### SECTION A - BUDGET SUMMARY

| Grant Program, Function or Activity (a) | Federal Catalog No. (b) * | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Unobligated (c) | Unliquidated (d) | DOE (e) | Sec. 155 (f) | Total (g) |
| 1. EES | 81.050 | $ 34,303.38 | $ 22,269.04 | $ 88,000 | $ 17,000 | $161,572.42 |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ 34,303.38 | $ 22,269.04 | $ 88,000 | $ 17,000 | $161,572.42 |

### SECTION B - BUDGET CATEGORIES

| 6. Object Class Categories | Grant Program, Function or Activity | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) Demonst. | (2) Ext. Servi | (3) Sec. 155 | (4) | |
| a. Personnel | $ 10,000 | $ 44,000 | $ -0- | $ | $ 54,000 |
| b. Fringe Benefits | 3,000 | 7,300 | -0- | | 10,300 |
| c. Travel | 3,000 | 3,000 | -0- | | 6,000 |
| d. Equipment ** | 15,123.42 | 455 | 17,000 | | 32,578.42 |
| e. Supplies | 1,200 | 1,800 | -0- | | 3,000 |
| f. Contractual | 39,000 | 2,000 | -0- | | 41,000 |
| g. Construction | -0- | -0- | -0- | | -0- |
| h. Other | 3,000 | 3,000 | -0- | | 6,000 |
| i. Total Direct Charges | 74,323 | 61,555 | 17,000 | | 152,878.42 |
| j. Indirect Charges | 1,610 | 7,084 | -0- | | 8,694 |
| k. TOTALS | $ 75,933.42 | $ 68639 | $ 17,000 | $ | $161,572.42 |
| 7. Program Income | $ | $ | $ | $ | $ |

* Actual carryover funds as of September 30, 1983.

** Additional carryover funds due to commercial digester not yet implemented as of September 30, 1983.

Office of the Governor
La Fortaleza
San Juan, Puerto Rico 00901

February 8, 1984

The Honorable Donald P. Hodel
Secretary
U.S. Department of Energy
Washington, D. C. 20585

Dear Secretary Hodel:

In accordance with the requirements of the Further Continuing Appropriations Act of 1983, I am reporting the distribution of the $2,038,200 assigned to the Government of Puerto Rico.

The Puerto Rico Office of Energy was appointed to allocate the funds among the federal programs it administers and which are eligible under the Act. In the last years, the Puerto Rico Office of Energy has seen a steady and substantial decrease in its federal funding for the Energy Extension Service (EES) and the State Energy Conservation Programs (SECP), which has limited the achievement of the goals of these programs.

Therefore, in order to maximize the benefits and services provided by these programs, Puerto Rico's share will be distributed as follows:

| | |
|---|---|
| EES | $1,038,200 |
| SECP | $1,000,000 |

At the moment, the Puerto Rico Office of Energy is evaluating the existing measures under the EES and SECP Programs to determine their actual efficiency in promoting energy conservation. As a result of this evaluation and the availability of funds, the Puerto Rico Office of Energy expects to expand its scope of effort under the most effective measures and develop new measures to increase the impact of energy conservation among the citizens.

The Puerto Rico Office of Energy expects to review the existing EES and SECP State Plans during the first quarter of 1984 to reflect the recommendations of this evaluation, and inform the Department of Energy of the expenditure of funds as appropriate.

Cordially,

Carlos Romero Barceló

Carlos Romero-Barceló

cc: Mr. Rayburn Hanzlik
Administrator
Economic Regulatory Administration

CRB:SB:FER:mtu

bcc: Mr. Eduardo López Ballori
Atty Fernando Rivera Munich

U.S. VIRGIN ISLANDS
ENERGY OFFICE

Phone: (809) 772-2615

47A Mars Hill
St. Croix
U.S. Virgin Islands
00840

October 19, 1983

Honorable Donald Hodel
Secretary of Energy
U.S. Department of Energy
Foresstal Building
1000 Independent Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Hodel:

Pursuant to the oil overcharge pricing settlement of January, 1983 (Warner Amendment), the Government of the Virgin Islands has been awarded $1,363,800.00 in energy funds.

The Virgin Islands will be using its share of the 155 funds for the implementation of the following programs:

| Program Title | Amount Budgeted |
|---|---|
| Energy Extension Service (EES) | $ 563,000.00 |
| State Energy Conservation Prog. (SECP) | 500,800.00 |
| Weatherization Program | 300,000.00 |
| TOTAL | $1,363,800.00 |

I have forwarded this information for your files, as required by the Federal Register, Vol. 48, No. 28, February 9, 1983, Rules and Regulations.

OFFICE OF THE GOVERNOR

As always, the V.I. Energy Office look forward to working with you and your staff.

Sincerely,

John Abramson Jr.

John Abramson, Jr.
Energy Director

JA/cc

cc: Honorable Juan Luis
Governor of the Virgin Islands

Mr. P. Marshall Ryan, Director
Atlanta Support Office

Edward H. Pulliam
Office of General Counsel
Department of Energy

NOV 7 1983

MEMORANDUM FOR: TED PULLIAM
OFFICE OF GENERAL COUNSEL

FROM: LES ADAMS
DEPUTY SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED UNDER THE WARNER AMENDMENT

As we discussed Friday morning, the Department has started receiving certification letters from a number of states indicating the projects to which they are applying funds received under the "Warner Amendment," section 155 of the Further Continuing Appropriations Act, 1983. The ERA is receiving these from the Secretary's Office as controlled correspondence. In order to respond, we need a review by your office to determine whether the proposals fall within the programs stated in the Warner Amendment. I will locate an appropriate review office at the Department of Health and Human Services for the programs under their jurisdiction.

I am forwarding certifications received from Florida, Kentucky and the Virgin Islands. What we need in return is your opinion as to whether the programs fall within the five Federal programs indicated in the Warner Amendment, whether the proposals present difficulties, e.g., inclusion of administrative costs, or whether HHS review is required.

You indicated you would provide a copy of the Rhode Island correspondence you had reviewed previously. If you have any questions, please feel free to contact me at 252-4387 or Carl Corrallo, 252-4167.

OSC/ERA/crm/rm.3HC49/x-4387/11/4/83

Department of Energy
Washington, D.C. 20585

NOV 30 1983

MEMORANDUM FOR TED PULLIAM
OFFICE OF GENERAL COUNSEL

FROM: COURTNEY BLAKE Courtney Blake
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED UNDER THE WARNER AMENDMENT

Attached are certification letters received by ERA from Oregon, North Dakota, South Dakota and Texas, for review by your office. These bring to seven (with those from Florida, Kentucky, and the Virgin Islands) the number of state certification letters we have forwarded to you for a determination of whether the states' proposals fall within the programs specified in the Warner Amendment.

If you have any questions, please contact me or Les Adams at 252-4387.

Department of Energy
Washington, D.C. 20585

December 9, 1983

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam Ted Pulli 9507
Office of General Counsel

SUBJECT: State Certification Letters Submitted under the Warner Amendment

The programs proposed for the use of Warner Amendment funds in the letters you recently forwarded to me from the Governors of North Dakota, South Dakota, and Texas are appropriate programs for the use of those funds. Since North Dakota and Texas will use at least some of their funds in the LIHEAP program administered by HHS (Texas refers to it as the Energy Crisis Invention Program), HHS should be coordinated with regarding those letters.

The Oregon letter suggests several uses which appear to be impermissible under the Warner Amendment. I have attached a draft of the letter I suggest sending in response.

Attachment

DRAFT

Dear Governor _____ (of Oregon)

Thank you for submitting your notification of the programs to which your State intends to apply the funds it received under Section 155 of the Further Continuing Appropriations Act, 1983, through a letter from Michael W. Grainey, Deputy Director of the Oregon Department of Energy.

According to the letter, Oregon plans to use its Section 155 funds under the State Energy Conservation Program for certain specified purposes. Although it is difficult to determine from the information provided in the letter, it is possible that some of the uses mentioned in the letter may not be permissible uses for the Section 155 funds under the State Energy Conservation Program or any of the other programs for which Section 155 funds may be used. Your State should work closely with the Department's Richland Operations Office concerning the details of your intended uses of these funds so that any problems that may exist concerning these uses and any necessary amendments to the appropriate State plans may be resolved at an early date.

Your cooperation in implementing the Act is greatly appreciated.

With best regards,

Sincerely,

Rayburn Hanzlik
Administrator
Economic Regulatory Administration

cc: Richland Operations Office

Department of Energy
Washington, D.C. 20585

DEC 15 1983

MEMORANDUM FOR: TED PULLIAM
OFFICE OF GENERAL COUNSEL

FROM: COURTNEY BLAKE CB
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTER SUBMITTED UNDER THE WARNER AMENDMENT

Attached is the certification letter received by ERA from South Carolina for review by your office. This brings to eight the number of state certification letters we have forwarded to you for determination of whether the states' proposals fall within the programs specified in the Warner Amendment.

If you have any question, please contact me or Les Adams at 252-4387.

Attachment

Department of Energy
Washington, D.C. 20585

December 20, 1983

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam TP
Office of General Counsel

SUBJECT: State Certification Letter from
South Carolina

The programs proposed for the use of Warner Amendment funds in the letter from the Governor's Office in South Carolina are appropriate programs for the use of these funds.

cc: Rich Brancato

**Department of Energy**
**Washington, D.C. 20585**

January 3, 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam
Office of General Counsel

SUBJECT: State Certification Letters from Missouri and Wyoming

The certification letters from the Governors of Missouri and Wyoming indicate that they are using the Warner Amendment funds for permissible programs.

cc: Rich Brancato

JAN 10 1984

MEMORANDUM FOR TED PULLIAM
OFFICE OF GENERAL COUNSEL
ECONOMIC REGULATORY ADMINISTRATION

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED UNDER THE WARNER AMENDMENT

Attached are the certification letters received by ERA from Alabama, Mississippi, New York, Pennsylvania and Utah. These bring to thirteen the state certification letters we have forwarded to your office for review of the states' proposals.

If you have any questions, please contact me or Les Adams at 252-4387.

Attachments

RG-30-OSC-ERA-CBlake:erm. Rm. 3H-049 X-252-4387 1/9/84

**Department of Energy**
**Washington, D.C. 20585**

January 13, 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam
Office of General Counsel

SUBJECT: State Certification Letters from Alabama, Mississippi, New York, Pennsylvania, and Utah

The certification letters from Alabama, Mississippi, Pennsylvania, and Utah indicate that these States are using the Warner Amendment funds for permissible programs.

The letter from New York raises some questions. I suggest sending a response like the attached draft.

Attachment

cc: Lona Feldman
Rich Brancato

**DRAFT**

Dear Governor Cuomo:

Thank you for submitting your notification of the programs to which your state intends to apply the funds it received under Section 155 of the Further Continuing Appropriations Act, 1983. Your letter satisfies the obligation placed on States to identify the Federal programs to which they have allocated or will allocate the funds they received under the Act.

While the identification of programs set out in your letter complies with the Act, it is difficult to determine from the information provided in your letter whether some of the specific uses you propose for funds under the Energy Extension Service and the State Energy Conservation Plan are in all instances permissible uses for funds under those programs. Your State should work closely with the Department's Support Office in New York concerning the details of your intended uses of these funds so that any problems that may exist concerning these uses and any necessary amendments to the appropriate State plans may be resolved at an early date.

Your cooperation in implementing the Act is greatly appreciated.

With best regards,

Sincerely,

Rayburn Hanzlik
Administrator
Economic Regulatory
Administration

cc: New York Support Office

Department of Energy
Washington, D.C. 20585

JAN 16 1984

MEMORANDUM FOR: TED PULLIAM
OFFICE OF GENERAL COUNSEL
ECONOMIC REGULATORY ADMINISTRATION

FROM: COURTNEY BLAKE cb
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED UNDER THE WARNER AMENDMENT

Attached are the certification letters ERA has received from California, the District of Columbia and Montana. With these, you will have received sixteen certification letters for your office's review of the states' proposals.

If you have any questions, please contact me or Les Adams at 252-4387.

Attachments

**Department of Energy**
**Washington, D.C. 20585**

JAN 25 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam
Office of General Counsel

SUBJECT: State Certification Letters from Montana, California and the District of Columbia

The certification letters from Montana, California, and the District of Columbia indicate that these States plan to use the Warner Amendment funds for permissible purposes. You might add a line to the letter responding to the California letter that if they in fact need to amend their plans for expending the money allocated to SECP, we would appreciate their amending their report.

We concur in the new version of the response letter which you sent to me on January 17 with the comments marked on the attached draft. We have yet to receive any copies of response letters to the governors. If any have gone out, we would appreciate having copies.

cc: Lona Feldman
Richard Brancato

2/1/84

MEMORANDUM FOR: TED PULLIAM
OFFICE OF GENERAL COUNSEL

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED UNDER THE WARNER AMENDMENT

Attached are certification letters received by ERA from 14 states for your review and a letter from the Secretary to Governor Cuomo of New York summarizing that state's use of Warner Amendment funds. The certification letters are from the following states: Georgia, Guam, Idaho, Indiana, Kansas, Maryland, Minnesota, Nebraska, New Mexico, North Carolina, Ohio, Washington, West Virginia and Wisconsin. This brings to 34 the certification letters sent to your office for review of the states' proposals.

If you have any questions, please contact me or Les Adams at 252-4387.

Attachments

2/2/84

MEMORANDUM FOR: TED PULLIAM
OFFICE OF GENERAL COUNSEL
ECONOMIC REGULATORY ADMINISTRATION

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: "WARNER AMENDMENT" ACKNOWLEDGEMENT LETTERS

Attached for your concurrence are drafts of letters to 14 state governors from whom we have received proposals for the use of Warner Amendment funds and whose proposals have been reviewed and approved by your office.

As we discussed, Carl Corrallo's concurrence on these letters is necessary after yours and, since he will be out of the office after the morning of Friday, January 3, 1984, I would be grateful for your response before that time so the letters can be forwarded to Rayburn Hanzlik for signature this week.

Please note that the texts of these letters are identical, except for those to the governors of New York and California, which have been amended to incorporate your suggestions.

Attachment

**Department of Energy**
**Washington, D.C. 20585**

February 2, 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam Ted Pulliam
Office of General Counsel

SUBJECT: Certification Letters from Florida, Virgin Islands, and Kentucky

The certification letters from Florida, Virgin Islands, and Kentucky indicate that these States plan to use the Warner Amendment funds for permissible purposes.

cc: Lona Feldman
Richard Brancato

6 feb 84

MEMORANDUM FOR: TED PULLIAM
OFFICE OF GENERAL COUNSEL

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED
UNDER THE WARNER AMENDMENT

Attached are the certification letters ERA has received from Delaware, Hawaii, the Northern Marianas, Vermont and Virginia. With these, you will have received 39 certification letters for review of the states' proposals by your office.

If you have any questions, please call me or Les Adams at 252-4337

Attachments

9 Feb '84

MEMORANDUM FOR TED PULLIAM
OFFICE OF GENERAL COUNSEL
ECONOMIC REGULATORY ADMINISTRATION

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED UNDER
THE WARNER AMENDMENT

Attached for your office's review are the certification letters ERA has received from the governors of Arkansas, Connecticut, Louisiana, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey and Tennessee. All these letters are dated prior to the February 4, 1984 deadline for submission of plans under the Warner Amendment.

According to my records, those states which have yet to submit plans for the use of Warner Amendment funds are Alaska, American Samoa, Arizona, Colorado, Illinois, Iowa and Puerto Rico.

If you have any questions, please call me or Les Adams at 252-4387.

Attachments

Department of Energy
Washington, D.C. 20585

February 14, 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam
Office of General Counsel

SUBJECT: State Certification Letters Submitted under the Warner Amendment

The certification letters from Arkansas, Delaware, Hawaii, Louisiana, Michigan, New Hampshire, Vermont, and the Northern Mariana Islands indicate that these States plan to use the Warner Amendment funds for permissible purposes. In addition, the letter from the State of Oklahoma, received earlier, also indicates that that State intends to use its Warner Amendment fund for permissible purposes.

I have some questions about the letters from Connecticut, Maine, Massachusetts, New Jersey, Nevada, Tennessee, and Virginia. I am also including a copy of the letter from Colorado, which I understand you have not previously seen and concerning which I also have some questions. I suggest responding to these letters according to the attached drafts.

Attachments

cc: Rich Brancato
Lona Feldman

Department of Energy
Washington, D.C. 20585

rec'd 2/16

February 6, 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam
Office of General Counsel

SUBJECT: State Certification Letters Submitted under the Warner Amendment

The certification letters from Georgia, Guam, Idaho, Indiana, Kansas, Maryland, Minnesota, Nebraska, North Carolina, Ohio, Washington, West Virginia, and Wisconsin indicate that these States plan to use the Warner Amendment funds for permissible purposes. The letter from New Mexico raises some questions. I suggest that the response to New Mexico be drafted along the lines of the attached draft.

Attachment

cc: Lona Feldman
Rich Brancato

**EXECUTIVE CORRESPONDENCE**

2/1/84

Department of Energy
Washington, D.C. 20585

~~Honorable Mario M. Cuomo~~ New Mexico
Governor of New York
State Capitol
Albany, ~~N.Y. 12224~~

Dear Governor ~~Cuomo:~~

Thank you for submitting notification of the programs to which your State has applied or intends to apply the funds it received under Section 155 of the Further Continuing Appropriations Act, 1983. Your letter satisfies the obligation placed on jurisdictions receiving monies pursuant to the Act, to identify, within one year of disbursement by DOE, to which of the five Federal programs cited in the Act those funds have been or will be allocated.

While the identification of programs set out in your letter complies with the requirement of the Act to report the use of funds, it is difficult to determine from information provided in your letter whether some of the specific uses you propose for funds under the ~~Energy Extension Service and the State Energy Conservation Plan~~ [illegible] are in all instances permissible uses for funds under those programs. Your State should work closely with the DOE's ~~Support~~ office in ~~New York,~~ Albuquerque identified below, concerning the details of your intended uses of these funds so that any problems that may exist and any necessary amendments to the State plans may be resolved at an early date. In addition, you should be aware that you may have obligations under the programs you selected to submit additional information to the DOE support office which provides assistance to your jurisdiction. Any questions you may have concerning such submission should be directed to that office.

Your cooperation in complying with the requirements of the Act is greatly appreciated.

With best regards,

Sincerely,

Rayburn Hanzlik
Administrator
Economic Regulatory Administration

cc: ~~U. S. D~~
~~New Yor~~
26 Federa. Plaza
~~New York, NY 10~~

39-396 - 380

DO NOT WRITE ON THI ITENDED FOR RE-USE
RETURN IT WITH THE FILE ... ORIGINATING OFFICE

Department of Energy
Washington, D.C. 20585

16/Feb. '84

MEMORANDUM FOR TED PULLIAM
OFFICE OF GENERAL COUNSEL
ECONOMIC REGULATORY ADMINISTRATION

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED UNDER THE WARNER AMENDMENT

Attached for your office's review is the certification letter ERA has received from the governor of Puerto Rico.

Early this week, we contacted the offices of the governors of the five states yet to submit certification letters: Alaska, American Samoa, Arizona, Illinois and Iowa. Each of these states indicated that its certification letter is forthcoming.

I also include for your information a supplemental report from the Northern Mariana Islands and a copy of my most recent letter to Norman Thompson of HHS, transmitting the plans of states using Warner Amendment funds for their LIHEAP activities.

If you have any questions, please call me at 252-4387.

Attachments

Department of Energy
Washington, D.C. 20585

March 6, 1984

MEMORANDUM FOR TED PULLIAM
OFFICE OF GENERAL COUNSEL
ECONOMIC REGULATORY ADMINISTRATION

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTERS SUBMITTED
UNDER THE WARNER AMENDMENT

Attached for your review are the last five certification letters received by EPA from the governors of the states pursuant to the Warner Amendment. These letters are from Alaska, American Samoa, Arizona, Illinois and Iowa.

I am this late in forwarding these to you because the Illinois letter only arrived at my desk this morning and I was holding the others for it.

As you know, after you approve the state plans, I forward them to Norman Thompson of HHS for coordination. Once you approve these last five, I will send copies of them, along with others I have been holding, to him and will send you a copy of the tramsmittal letter.

If you have any questions, please call me at 252-4387..

Attachments

**Department of Energy**
**Washington, D.C. 20585**

March 7, 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam
Office of General Counsel

SUBJECT: State Certification Letters Submitted under the Warner Amendment

The certification letters from Puerto Rico, Alaska, American Samoa, and Illinois indicate that these States plan to use the Warner Amendment funds for permissible purposes.

I have some questions about the letters from Arizona and Iowa. I suggest responding to these letters according to the attached drafts. Also enclosed is a copy of the draft response to Oregon which you indicated that you needed.

According to my records, we now have responses from all the States and territories which qualified for Warner Amendment funds.

Attachments

cc: Rich Brancato
Lona Feldman

MAY 17 1984

MEMORANDUM FOR TED PULLIAM
OFFICE OF GENERAL COUNSEL
ECONOMIC REGULATORY ADMINISTRATION

FROM: COURTNEY BLAKE
ASSISTANT SOLICITOR
ECONOMIC REGULATORY ADMINISTRATION

SUBJECT: STATE CERTIFICATION LETTER SUBMITTED BY LOUISIANA
UNDER THE WARNER AMENDMENT

Attached for your review is the amended certification letter received by ERA from the governor of Louisiana, pursuant to the Warner Amendment. Since the plan explicity supercedes that submitted on February 2, 1984 and includes substantial changes from the earlier plan, this certification should be treated as an original filing.

If you have any questions, please call me at 252-4387.

Department of Energy
Washington, D.C. 20585

May 23, 1984

TO: Courtney Blake
Assistant Solicitor
Economic Regulatory Administration

FROM: Ted Pulliam
Office of General Counsel

SUBJECT: State Certification Amendment Submitted by Louisiana under the Warner Amendment

The amended certification letter from Louisiana indicates that that State plans to use the Warner Amendment funds for permissible purposes.

**Department of Energy**
**Washington, D.C. 20585**

July 18, 1984

Honorable Lowell P. Weicker, Jr.
Chairman, Subcommittee on Energy
  Conservation and Supply
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On June 14, 1984, Under Secretary Pat Collins appeared before the Energy and Natural Resources Subcommittee on Energy Conservation and Supply to discuss S. 2370, the Petroleum Overcharge Restitution Act and the Weatherization program. Mr. Collins was accompanied by Theodore J. Garrish, General Counsel.

Following the hearing three sets of questions were submitted by the Majority and the Minority members. We responded to the first set of questions on June 28, 1984 and the second set of questions on July 16, 1984. Enclosed are the responses to the third and last set of questions. This closes our files.

If you have any questions, please call Ingrid Nelson or Tom pretorius of my staff on 252-4277. They will be happy to assist you.

Sincerely,

Thomas H. Pretorius
for Robert G. Rabben
Assistant General Counsel
  for Legislation

Enclosure
  Set III

cc: Mr. Al Astrin

# QUESTIONS AND ANSWERS
FOLLOWING THE
JUNE 14, 1984, HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
S. 2370, "PETROLEUM OVERCHARGE RESTITUTION ACT"
AND WEATHERIZATION

SET III

## QUESTIONS FROM SENATOR JAMES A. MCCLURE

Question 1. Please describe the major categories of overcharge cases resulting from alleged petroleum pricing violations under the EPAA and now pending before DOE.

Answer: The major categories of overcharge cases now pending before DOE involve crude oil producers, crude oil resellers, major integrated refiners (including natural gas processors) and petroleum products resellers and retailers.

QUESTIONS FROM SENATOR JAMES A. MCCLURE

Question 2. For each type of overcharge case, what is the estimated total amount of additional recoveries?

Answer: As of July 9, 1984, the maximum recovery excluding interest (and ignoring bankrupties) for cases pending before the Office of Hearings and Appeals is estimated as:

| Type of Case | Alleged Overcharges |
|---|---|
| Crude oil resellers | $ 622,623,700.00 |
| Crude oil resellers | $ 211,075,500.00 |
| Refiners (including crude oil overcharges of integrated refiners) | $1,154,198,500.00* |
| Resellers and retailers | $ 153,796,000.00 |
| TOTAL | $2,141,693,700.00 |

In addition there are other cases pending in court. The Exxon case of more tnan $1.7 billion and Energy Reserve case of more than $1 billion.

*Parenthetically it should be noted that, cases involving refiner cost violations allege an additional $1.533,263,602.16 of improper costs. Refiner cost violations are not the same as overcharges. ERA has not calculated the maximum amount of overcharges that would result from its winning all the refiner cost violation cases. With respect to $628,571,933.10 of the sum involved in these refiner cost cases, the ERA has proposed in some enforcement proceedings an alternative remedy of directing a firm to refund some of these funds directly to customers.

QUESTIONS FROM SENATOR JAMES A. MCCLURE

Question 3. You testified that apart from the $200 million distributed pursuant to the Warner Amendment, approximately $575 million of recovered overcharges has been disbursed. Please provide a breakdown of the major categories of recipients of these funds, and explain the basis for the distribution to the U.S. Treasury and to each category of recipient.

Answer: The overcharges recovered by Consent and Remedial Orders which were not paid to the U.S. Treasury or placed into a government escrow account were paid to overcharged customers (85%), various states in which the overcharges took place (6%), and deposits of crude oil into the Strategic Petroleum Reserve (9%). Overcharged customers received refunds when they were either identifiable individually or by group (*e.g.*, retail motorists). When customers were not readily identifiable the Consent Orders provided for payments to the states in which the consenting firm marketed its products. Generally, the U.S. Treasury and Strategic Petroleum Reserve restitutionary remedies were utilized in cases of alleged crude oil overcharges because of the difficulty of tracing the ultimate harm through the entire petroleum distribution chain of producers, crude oil resellers, refiners, product wholesalers, retailers and eventual consumers.

QUESTIONS FROM SENATOR JAMES A. MCCLURE

| | |
|---|---|
| Question 4. | Is a separate evidentiary hearing on restitution issues held in each case? Please describe the procedure and the evidentiary standards by which DOE determines whether direct restitution can be made a particular case. |
| Answer: | In special refund proceedings conducted before OHA pursuant to 10 C.F.R. Part 205, Subpart V, no separate evidentiary hearing is held on restitution issues. During the course of Subpart V proceedings, the OHA examines the audit files compiled for each enforcement proceeding involved, including pleadings filed by the parties to the enforcement proceeding. In some cases, the OHA may also contact the firm that provided the restitutionary funds in order to obtain additional information about its operations and customers during the period of price controls. The OHA provides notice by direct mail of the opportunity to participate in the proceeding to all firms and individuals whose names and addresses appear in the enforcement files. In addition, the OHA provides notice by direct mail where appropriate to national and regional trade associations representing consumers, resellers and retailers, to state governments and to any individual who has requested notice concerning a particular case. The DOE regulations also require publication of special refund procedures, in both proposed and final form, in the Federal Register as a means of locating additional refund claimants, and the agency issues press releases concerning specific refund procedures of significant interest to large numbers of customers. If after all of these efforts no claimants come forward, the OHA may conclude that no person has a claim for direct restitution and indirect restitutionary methods may be explored. |

## QUESTIONS FROM SENATOR JAMES A. MCCLURE

Question 5. Please describe the involvement of the States as claimants for restitution funds. What has been the basis for their claims?

Answer: States have been involved as claimants in two ways. First, States have submitted claims for refund money based upon a state's purchase of petroleum products from firms that allegedly violated the DOE pricing regulations. *See*, *e.g.*, *Standard Oil Company (Indiana)/State of Illinois*, 11 DOE 85,230 (1983). Second, States have been permitted to receive restitutionary funds for indirect restitution -- i.e., on behalf of their affected citizens who did not file refund claims. *See*, *e.g.*, *Standard Oil Company (Indiana)/State of Alabama*, 12 DOE 85,039 (1984).

## QUESTIONS FROM SENATOR JAMES A. MCCLURE

| | |
|---|---|
| Question 6. | Have States intervened in the enforcement proceedings? If so, what has been the basis of their intervention? |
| Answer: | Yes, some States have sought to intervene in enforcement proceedings before the OHA. The basis for their intervention may either be due to the State's status as an end-user purchaser of petroleum products from firms that are the subject of enforcement proceedings or due to a State's claim to represent all overcharged customers of a firm that are located within its borders. |

QUESTIONS FROM SENATOR JAMES A. MCCLURE

Question 7. Under current law, in an overcharge case pending in Federal court, does the judge have unlimited discretion in devising a restitution remedy?

Answer: No. Although the judge has very broad discretion in fashioning a restitutionary remedy, that discretion is not unlimited. The judge cannot abuse the discretion, which is measured by the rule of reason.

QUESTIONS FROM SENATOR JAMES A. MCCLURE

Question 8. What amount of funds are currently held in deposit fund escrow accounts, and approximately how much will be held for each of fiscal year 1984 through 1989?

Answer: As of June 29, 1984, there was $473,962,558.83 in the deposit fund escrow account. There is no way for us to estimate the amounts that will be in the account in the future because that depends upon the success of the DOE in administrative and judicial litigation, the speed with which cases are prosecuted or settled, the length of time it takes to collect the proceeds from these actions, and the number and amounts of refund claims against the funds.

## QUESTIONS FROM SENATOR JAMES A. MCCLURE

Question 9. Does the Department intend to hold funds in escrow pending the enactment of legislation establishing an Petroleum Overcharge Restitution Fund?

Answer: The agency is continuing to attempt to identify parties injured by petroleum overcharges and it is receiving and processing applications for refund, in addition to soliciting comments upon proposed procedures for a number of these cases. In cases in which the impact of overcharges was nationwide and in which no direct restitution claims have been filed or all direct restitution claims have been processed and no determination has yet been made as to indirect restitution of any remaining funds, we plan to continue to hold those funds in escrow.

**Philadelphia Gas Works**
James G McKee
Chief Executive Officer

PGW

1800 North Ninth Street, Philadelphia, Pa 19122
Telephone (215) 978-3010

June 26, 1984

Mr. Allan Stayman
Committee on Energy
and Natural Resources
358 Dirksen Building
Washington, DC 20510

Dear Mr. Stayman:

Enclosed please find my responses to the questions submitted to me by Senator Weicker at the conclusion of the hearings conducted by the Subcommittee on Energy Conservation and Supply on June 14, 1984. I appreciate your giving me the time to respond, and would be happy to answer any further questions which Senator Weicker or other members of the Subcommittee would like to address to me.

I would also like to thank you and the Senator for inviting me to testify at the hearings. I feel strongly that there must be more public exposure about the issue of poverty and energy costs. Unlike the "homeless", the poor and elderly struggling to pay utility bills, who may be tomorrow's "homeless", are mostly invisible to the public.

Please keep me informed about the status of SB 2370 and any changes that may result from the hearings regarding DOE's weatherization program. I will let you know the outcome of the Full Service Program (FSP) which I alluded to in my prepared remarks.

Thank you again.

Sincerely,

JAMES G. McKEE

JGMcK/mms

Enclosure

cc: The Honorable John H. Heinz, III

## RESPONSES TO QUESTIONS RELATING TO MR. JAMES G. McKEE'S TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON ENERGY CONSERVATION AND SUPPLY WITH REGARD TO SENATE BILL #2370 (OIL OVERCHARGE FUNDS) ON 6/14/84

1. IN YOUR PROGRAM EXPERIENCE AS AN OPERATOR OF AN ENERGY ASSISTANCE PROGRAM WITH A PUBLIC UTILITY, HAVE YOU HAD ANY PARTICULAR DIFFICULTIES IN COORDINATING YOUR PROGRAM WITH THE FEDERAL, STATE AND LOCAL PROGRAMS?

There has been some coordination of our energy assistance and weatherization efforts with programs operated by federal, state and local governments. For example, PGW's weatherization loan program will reach several thousand additional low and moderate income households in need because of the principal reduction payment provided by a $750,000 Solar and Energy Conservation Bank allocation. In addition, local government has allocated Community Development Block Grant funds that will provide for weatherization grants, administered by PGW, for several thousand additional very low income households.

However, I must report that we have had serious problems with the State operation of the federally-funded Low Income Home Energy Assistance Program. Outreach efforts for this program are inadequate and do not take into account the characteristics of our City's low-income population. The LIHEAP Program as operated by the State Department of Public Welfare does not reach all households in need. Fear that a "welfare lien" will be placed on the recipient's house discourages many eligible households from applying.

Moreover, day to day administration of the program has not been adequate. At one point this February, over 12,000 applications submitted at the start of the program year on October 1, 1983 remained unopened by state program operators. The LIHEAP Crisis Program is operated effectively by a City agency: it, however, is subject to unpredictable funding allocations by the State, which in turn means our customers in need of such assistance cannot be served in a prompt or predictable manner.

One last area of concern is the need to obtain priority treatment for households most in need under the State-administered low income weatherization programs. Households desperately struggling to pay their bills and who receive assistance from the local non-profit Utility Emergency Services Program could not, in the past, be referred directly to the State program. I am pleased to say that situation is about to change.

2. DO YOU BELIEVE THAT PUBLIC UTILITIES SHOULD PROVIDE GREATER ASSISTANCE IN FINANCING WEATHERIZATION?

Yes, as a matter of fact, PGW provides weatherization loans with repayment periods up to five years without any charge for interest. The American Gas Assocation, on my behalf, filed with the subcommittee a report outlining similar efforts on the part of other public utilities.

3. DOES WEATHERIZATION ADEQUATELY SERVE THE NEEDS OF RENTAL PROPERTY?

This is perhaps one of the most difficult objectives to address when designing an effective weatherization program. Fundamentally, it involves landlord and tenant benefits which are not usually compatible. Special incentives to the landlord will not necessarily find their way to the tenant. Perhaps the best approach would be one involving landlord tax credits where it can be demonstrated that a weatherization benefit will accrue to the tenant.

4. DO YOU HAVE ANY LEGISLATIVE RECOMMENDATIONS FOR IMPROVING THE WEATHERIZATION PROGRAM?

A number of weatherization initiatives, at a federal level, emanate from different legislative acts. As a result, there has been a proliferation of activities and administering agencies. It may very well be worth the effort to make an inventory of these various programs and their agencies and from this, work toward some sensible consolidation of effort. Specifically, with respect to oil overcharge funds, I again urge that these monies be appropriated to supplement current federal budget authorizations for low-income energy assistance and home weatherization. They should not be used to substitute for regular federal budget appropriations from the general fund of the U.S. Treasury, as the Bill before you would provide.

5. DO YOU SUPPORT THE HEINZ APPROACH?

Yes, I have written to Senator Heinz and expressed my support for passage of S 1953.

6/26/84

National
Consumer
Law Center
Inc. 236 Massachusetts Ave., NE
Washington, DC 20002
(202) 543-6060

Boston Office

Eleven Beacon St
Boston, MA 02108
(617) 523-8010

June 22, 1984

Senator Lowell Weicker
Chairman
Energy Conservation & Supply
Subcommittee of the Senate
Energy Committee
212 Hart Senate Office Building
Washington, D.C. 20510

Attention: Al Stayman

Dear Senator Weicker:

At the close of the hearing on June 14, Al Stayman gave us a number of questions which he requested that we answer. The responses to those questions are set forth below. If there is any other way that we can aid the Subcommittee's deliberations on the important matter of how to treat the oil overcharge funds, we hope that you and your staff will not hesitate to ask.

Q. Is it possible to estimate to what extent payment of direct and indirect restitution would be affected by the proposed changes in the disbursement process?

A. With respect to direct restitution, the Administration's proposal would have no clear impact. In saying this, I assume that the claims procedure referred to in Section 2(b) and Section 3(b) of the bill is essentially the same claims procedure, operating under the same guidelines, as is being administered by the Office of Hearings and Appeals. (This is not crystal clear and might be a further cause of concern.) As I said at the hearing, the Administration's bill, in Section 2(b) and 3(b), makes it clear that the funds affected by the PORF are only those remaining after the completion of the claims procedure.

However, equally as clearly, the PORF would cut off the indirect restitution process, as it is being carried out by the Office of Hearings and Appeals today. In short, those funds not claimed in the procedures aimed at providing direct restitution would be lifted out of the process and used for program purposes in a way which would essentially replace currently appropriated dollars. In the process of eliminating the current indirect restitution process, and doing it in this fashion, the PORF would provide no real benefit to consumers, low-income or otherwise.

* * *

Q. In your opinion, does Section 2 of the bill meet the constitutional test of separation of powers?

A. While no definitive judgment can be provided here, we believe there is good reason to believe that it does not. See our discussion of this issue on pp. 25 through 31 of the memorandum attached to my testimony.

* * *

Q. Does the Administration proposal remove monies from the current trust fund so that disbursements can, in fact, no longer be made by the courts or the Office of Hearings & Appeals?

A. The question somewhat misstates the current situation. In fact, no funds developed under court litigation have been placed in a trust fund held by the government. In short, the only funds held in trust are those which will be disposed of by the Office of Hearings & Appeals pursuant to administrative proceedings. While the Exxon monies may, in the event that the district court order is affirmed, be held for a short period in trust by the government, absent legislation that trust arrangement will be of a short duration, simply for the period that it takes for the government to disburse those funds under the court's order.

The PORF proposal, however, would clearly affect that judicial process and cut off the ability of the Office of Hearings and Appeals to affect indirect restitution by ordering distributions of accummulated funds. Section 2(b) and (c) of the bill would require the courts to place funds subject to their orders in the fund, or in the hands of the government for the claims procedure and then into the fund. Once funds are placed in the PORF, the ability of either the courts or OHA to affect restitution with them would be cut off.

* * *

Q. Is there any precedent for this approach to allocation of federal trust funds?

A. We know of no precedent for the concept that funds held in trust can be distributed to the beneficiaries through federal programs, where the result is simply to reduce the level of funding from U.S. tax dollars which has historically been provided through those programs. Moreover, for the reasons set forth in our legal memorandum, we think that that approach would be inappropriate and legal. There is, however, precedent for resort to indirect restitution, where the overcharged individuals cannot be found. That precedent includes the use of the states as the distribution vehicle. I am attaching to this letter an excerpt from comments we provided to the Office of Hearing and Appeals in 1980, when OHA was first considering the appropriate disposition of unclaimed funds. Our analysis confirms the validity of the steps now being taken by OHA to distribute funds not directly claimed.

Sincerely,

Charles E. Hill

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# "COLD -- NOT BY CHOICE"

## A State-By-State Analysis of
## The Impact of Energy Prices On
## The Poor, Elderly, and
## The Unemployed

Prepared With the Assistance of the Grier Partnership
Bethesda, Maryland

April, 1984

## SUMMARY DATA FOR WINTER 1983--1984

| | | | | | | Unemployed | | | | Elderly | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. Households Eligible for LIHEAP (1980 Census) | No. Households Receiving LIHEAP Payments in FY '83 | Average Annual Low-Income Home Energy Expenditure | Average Annual LIHEAP Payment FY 1984 | Average Winter Month Energy Expenditure | Number Unemployed In January 1984 | Average Monthly Unemployment Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures | Maximum SSI Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures |
| State | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| ALABAMA | 396,640 | 195,169 | $823 | $131 | $106 | 236,000 | $380 | 27.9% | $63 | $304 | 34.9% | $46 |
| ARIZONA | 226,380 | 26,030 | $629 | $100 | $67 | 89,000 | $439 | 15.3% | $86 | $304 | 22.1% | $55 |
| ARKANSAS | 259,560 | 61,117 | $914 | $117 | $122 | 108,000 | $418 | 29.3% | $68 | $304 | 40.2% | $42 |
| CALIFORNIA | 2,068,280 | 288,734 | $509 | $143 | $53 | 1,132,000 | $476 | 11.1% | $98 | $461 | 11.5% | $94 |
| COLORADO | 229,220 | 66,165 | $872 | $265 | $105 | 100,000 | $672 | 15.6% | $131 | $364 | 28.7% | $60 |
| CONNECTICUT | 203,380 | 57,094 | $1,491 | $500 | $194 | 84,000 | $557 | 34.8% | $84 | $471 | 41.2% | $64 |
| DELAWARE | 41,800 | 12,150 | $1,129 | $314 | $161 | 25,000 | $456 | 35.3% | $68 | $304 | 52.9% | $33 |
| DIST OF COL | 61,220 | 10,670 | $1,052 | $361 | $150 | 39,000 | $643 | 23.3% | $114 | $319 | 47.0% | $39 |
| FLORIDA | 899,640 | 132,595 | $538 | $110 | $57 | 367,000 | $409 | 14.0% | $81 | $304 | 18.8% | $57 |
| GEORGIA | 486,700 | 109,220 | $760 | $150 | $105 | 173,000 | $429 | 24.4% | $75 | $304 | 34.4% | $46 |

## SUMMARY DATA FOR WINTER 1983-1984

| | | | | | | Unemployed | | | | Elderly | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. Households Eligible for LIHEAP (1980 Census) | No. Households Receiving LIHEAP Payments in FY '83 | Average Annual Low-Income Home Energy Expenditure | Average Annual LIHEAP Payment FY 1984 | Average Winter Month Energy Expenditure | Number Unemployed In January 1984 | Average Monthly Unemployment Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures | Maximum SSI Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures |
| State | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| IDAHO | 71,660 | 34,927 | $1,027 | $220 | $128 | 39,000 | $508 | 25.1% | $88 | $387 | 33.0% | $60 |
| ILLINOIS | 874,040 | 394,779 | $1,035 | $300 | $142 | 589,000 | $595 | 23.9% | $104 | $315 | 45.2% | $40 |
| INDIANA | 402,560 | 167,592 | $1,011 | $258 | $136 | 310,000 | $390 | 34.9% | $59 | $304 | 44.6% | $39 |
| IOWA | 222,580 | 95,359 | $994 | $247 | $142 | 114,000 | $582 | 24.4% | $102 | $304 | 46.6% | $37 |
| KANSAS | 186,020 | 43,253 | $827 | $186 | $112 | 67,000 | $560 | 20.0% | $103 | $304 | 36.8% | $44 |
| KENTUCKY | 347,480 | 39,961 | $974 | $212 | $133 | 202,000 | $460 | 28.9% | $75 | $304 | 43.6% | $40 |
| LOUISIANA | 385,760 | 126,295 | $746 | $60 | $94 | 195,000 | $687 | 13.6% | $137 | $304 | 30.8% | $49 |
| MAINE | 95,420 | 51,925 | $1,737 | $350 | $225 | 48,000 | $472 | 47.6% | $57 | $314 | 71.4% | $21 |
| MARYLAND | 301,000 | 82,752 | $1,094 | $272 | $156 | 150,000 | $526 | 29.7% | $85 | $304 | 51.4% | $34 |
| MASSACHUSETTS | 455,960 | 153,781 | $1,476 | $520 | $190 | 221,000 | $543 | 35.0% | $81 | $433 | 43.8% | $56 |

## SUMMARY DATA FOR WINTER 1983–1984

| | | | | | | Unemployed | | | | Elderly | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. Households Eligible for LIHEAP (1980 Census) | No. Households Receiving LIHEAP Payments in FY '83 | Average Annual Low-Income Home Energy Expenditure | Average Annual LIHEAP Payment FY 1984 | Average Winter Month Energy Expenditure | Number Unemployed In January 1984 | Average Monthly Unemployment Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures | Maximum SSI Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures |
| State | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| MICHIGAN | 745,980 | 386,949 | $1,101 | $134 | $146 | 530,000 | $634 | 23.1% | $113 | $327 | 44.8% | $42 |
| MINNESOTA | 341,140 | 123,902 | $1,314 | $511 | $189 | 167,000 | $609 | 31.0% | $97 | $339 | 55.7% | $35 |
| MISSISSIPPI | 286,660 | 71,391 | $807 | $150 | $103 | 112,000 | $383 | 26.9% | $65 | $304 | 33.9% | $46 |
| MISSOURI | 431,300 | 156,171 | $824 | $174 | $113 | 236,000 | $399 | 28.4% | $66 | $304 | 37.3% | $44 |
| MONTANA | 61,660 | 17,345 | $952 | $463 | $115 | 41,000 | $565 | 20.3% | $104 | $304 | 37.7% | $44 |
| NEBRASKA | 113,340 | 37,165 | $955 | $338 | $132 | 44,000 | $412 | 32.1% | $65 | $397 | 33.3% | $61 |
| NEVADA | 60,880 | 10,448 | $802 | $223 | $89 | 45,000 | $530 | 16.9% | $102 | $341 | 26.3% | $58 |
| NEW HAMPSHIRE | 61,060 | 26,913 | $1,691 | $468 | $222 | 26,000 | $448 | 49.6% | $52 | $331 | 67.1% | $25 |
| NEW JERSEY | 562,720 | 214,983 | $1,332 | $284 | $175 | 287,000 | $557 | 31.4% | $88 | $331 | 52.7% | $36 |
| NEW MEXICO | 116,720 | 49,012 | $828 | $50 | $102 | 54,000 | $490 | 20.8% | $90 | $304 | 33.5% | $47 |

## SUMMARY DATA FOR WINTER 1983-1984

| | | | | | | Unemployed | | | | Elderly | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. Households Eligible for LIHEAP (1980 Census) | No. Households Receiving LIHEAP Payments in FY '83 | Average Annual Low-Income Home Energy Expenditure | Average Annual LIHEAP Payment FY 1984 | Average Winter Month Energy Expenditure | Number Unemployed In January 1984 | Average Monthly Unemployment Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures | Maximum SSI Benefit | Pct. of Benefi Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures |
| State | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| NEW YORK | 1,502,600 | 1,212,533 | $1,400 | $200 | $183 | 637,000 | $509 | 35.9% | $75 | $365 | 50.0% | $42 |
| NORTH CAROLINA | 502,300 | 145,487 | $891 | $160 | $124 | 237,000 | $474 | 26.1% | $81 | $304 | 40.7% | $42 |
| NORTH DAKOTA | 49,340 | 16,221 | $1,206 | $709 | $176 | 23,000 | $581 | 30.2% | $94 | $304 | 57.7% | $30 |
| OHIO | 820,240 | 380,721 | $997 | $140 | $132 | 512,000 | $594 | 22.2% | $107 | $304 | 43.4% | $40 |
| OKLAHOMA | 283,260 | 70,634 | $920 | $139 | $126 | 130,000 | $586 | 21.5% | $106 | $373 | 33.8% | $57 |
| OREGON | 229,380 | 94,609 | $831 | $198 | $100 | 151,000 | $553 | 18.0% | $105 | $306 | 32.5% | $48 |
| PENNSYLVANIA | 901,520 | 391,935 | $1,144 | $279 | $154 | 542,000 | $631 | 24.4% | $110 | $337 | 45.6% | $42 |
| RHODE ISLAND | 76,340 | 31,112 | $1,421 | $270 | $176 | 38,000 | $484 | 36.4% | $71 | $355 | 49.6% | $41 |
| SOUTH CAROLINA | 265,380 | 70,000 | $789 | $102 | $109 | 123,000 | $407 | 26.8% | $69 | $304 | 35.8% | $43 |
| SOUTH DAKOTA | 64,900 | 19,043 | $1,083 | $405 | $156 | 17,000 | $512 | 30.5% | $82 | $319 | 48.9% | $38 |

## SUMMARY DATA FOR WINTER 1983-1984

| | | | | | | Unemployed | | | | Elderly | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No. Households Eligible for LIHEAP (1980 Census) | No. Households Receiving LIHEAP Payments in FY '83 | Average Annual Low-Income Home Energy Expenditure | Average Annual LIHEAP Payment FY 1984 | Average Winter Month Energy Expenditure | Number Unemployed In January 1984 | Average Monthly Unemployment Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures | Maximum SSI Benefit | Pct. of Benefit Spent on Energy in Winter Months | Weekly Balance Left After Winter Home Energy Expenditures |
| Item | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| TENNESSEE | 427,680 | 110,120 | $877 | $198 | $121 | 244,000 | $381 | 31.7% | $60 | $304 | 39.8% | $42 |
| TEXAS * | 1,244,060 | 283,654 | $771 | $76 | $98 | 556,000 | $594 | 16.5% | $114 | $304 | 32.1% | $48 |
| UTAH | 90,700 | 41,199 | $780 | $268 | $94 | 60,000 | $561 | 16.7% | $108 | $314 | 29.9% | $51 |
| VERMONT | 37,560 | 22,120 | $1,728 | $400 | $229 | 19,000 | $476 | 48.1% | $57 | $354 | 64.7% | $29 |
| VIRGINIA | 417,020 | 112,720 | $1,019 | $245 | $143 | 163,000 | $482 | 29.7% | $78 | $304 | 47.0% | $37 |
| WASHINGTON | 336,640 | 116,271 | $854 | $180 | $104 | 253,000 | $607 | 17.1% | $116 | $343 | 30.3% | $55 |
| WEST VIRGINIA | 173,880 | 75,789 | $1,070 | $161 | $151 | 128,000 | $616 | 24.5% | $107 | $304 | 49.5% | $35 |
| WISCONSIN | 368,220 | 192,559 | $1,188 | $256 | $161 | 238,000 | $581 | 27.8% | $97 | $404 | 39.9% | $56 |
| WYOMING | 34,140 | 14,342 | $929 | $265 | $113 | 17,000 | $533 | 21.2% | $97 | $324 | 34.9% | $49 |
| | | | | | | | | | | | | |

# Analysis of the Proposed "Petroleum Overcharge Restitution Fund" (S. 2370 and H.R. 4672)

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April 12, 1984

# Analysis of the Proposed "Petroleum Overcharge Restitution Fund"

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## Analysis of the Proposed "Petroleum Overcharge Restitution Fund"

On February 29, 1984, the Administration submitted to Congress legislation (S. 2370 and H.R. 4672) which would create an altogether new approach to the disposition of overcharge funds recovered from oil companies alleged to have violated Section 209 of the Economic Stabilization Act. The bill would apply to all settlement funds currently held by the Department of Energy ("DOE"), all overcharge funds obtained through future DOE litigation or consent decrees, and funds currently subject to litigation in pending federal court proceedings. The central feature of the legislation is a newly created "Petroleum Overcharge Restitution Fund" ("PORF"). From the PORF, which the Administration's budget claims will contain at least $2 billion by FY 1985, the Administration has estimated that it would provide most of the requested FY 1985 funding for the Low-Income Home Energy Assistance Program, the Low-Income Weatherization Program, and the Schools and Hospitals Conservation Program. The Administration's budget figures for these three programs for FY 1985 are identical to the current funding levels for FY 1984.

We have carefully reviewed both the legal and policy issues raised by the proposed legislation. On the basis of that review, we have concluded that the procedures proposed are inconsistent with the government's obligations to those who have suffered from illegal oil price overcharges and with the restitutionary purpose of Section 209.

Section I of this memorandum explains the PORF legislation in detail, while Section II provides an overview of the existing statutory background of the proposal. Section III explains how PORF is inconsistent with the theory of restitution, and how it will deny recovery to most consumers and allow use of oil overcharge funds in a manner which bears no relation to injuries already incurred. Section IV looks to an analogous area of the law for guidance in determining what is proper government conduct here. Specifically, it explains that because the government must act as a trustee of the oil overcharge funds, the government cannot utilize those funds for its own purposes without violating its fiduciary responsibilities to the beneficiaries of the fund. That section also emphasizes the impropriety of cancelling _future_ benefits otherwise available to low income consumers as a condition for their receipt of compensation for _past_ injuries.

Section V explains that the legislation proposed by the Administration, in addition to violating the restitutionary purposes of Section 209 and the government's obligations as a trustee, may also be unconstitutional. Since it allows the Congress to step into ongoing litigation and dictate the results which a court must reach in a particular case, the proposed legislation may violate the separation of powers principles set forth in Articles I and III of the Constitution. Finally, Section VI discusses the practical consequences of the PORF legislation, including the bill's erroneous factual assumptions about the amount of oil overcharge money that may be available, and explains how the substitution of that money for funds appropriated in a normal fashion will jeopardize the future funding for low-income energy assistance programs.

## I. THE ADMINISTRATION'S PORF BILL AND ITS EFFECT

The Administration's bill was introduced by Senator McClure (S. 2370) and Representatives Broyhill and Cochran (H.R. 4672) at the end of February. In each instance, introduction was "by request." The bill encompasses oil overcharge recoveries currently held in escrow and amounts which are the subject of an existing judicial order (*e.g.* the *Exxon* case, discussed below), as well as amounts to be obtained under future litigation or settlements. (Section 2(a) and (c).) The Secretary of Energy is ordered to conduct a proceeding designed to identify and make restitution to persons determined to have "sustained economic injury." All oil overcharge funds beyond those required for the claims procedure are to be deposited in PORF. (Section 3(b).)

These moneys are then to be directed to the funding of the Low-Income Home Energy Assistance Program (LIHEAP), the Low-Income Weatherization Program, and the Schools and Hospitals Weatherization Program. (Section 3(d).) However, the bill explicitly authorizes funds for those three programs only at the initial FY 1984 funding level (e.g., in the case of LIHEAP, before the recent $200 million supplemental). Total funding for these programs, therefore, from whatever source, is not to exceed this year's initial appropriation; and actual tax revenues are to be drawn upon only to the extent that PORF funds fall short of the actual program appropriations, within these authorized ceilings. (Section 3(d) and Section 4.)

The PORF proposal, then, amounts essentially to a deposit in the Treasury of the oil overcharge funds. In operation, it will simply back out appropriated dollars from these three federal programs. Low-income consumers, schools, and hospitals will feel no benefit from the funds. This is clear from the recent funding history of these programs. LIHEAP, for example, was funded at $1.875 billion in FY 1982, $1.975 billion in FY 1983, and, with the recent supplemental appropriation, $2.075 billion in FY 1984. The PORF proposal, tied to last fall's appropriation figure for LIHEAP, would provide maximum funding of only $1.875 for energy assistance, drawn to the extent available from overcharge moneys. The weatherization program received $145 million in FY 1982, $245 million in FY 1983, and $190 million in FY 1984. The 1984 figure would be the ceiling for PORF. Similarly, the Schools and Hospitals program received $48 million in FY 1982, $98 million in FY 1983, and $48 million in FY 1984. Total funding for this program in 1985 could not exceed the $48 million figure.

Hence, the PORF proposal would do no more than maintain (and in some significant ways, actually decrease) the funding for those programs -- funding which Congress has repeatedly passed, over the Administration's repeated objections.[1] In treating the oil overcharge funds simply as a substitute for tax revenues, however, the proposal would exact a real price from low-income consumers. In essence, the proposal requires low-income consumers to give up any benefits from the government's enforcement actions, and to forego any remedy for past injury.[2]

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[1] Indeed, the Administration has unsuccessfully sought to terminate the weatherization and schools and hospitals programs each year.

[2] Seen another way, the funds are actually akin to a tax on petroleum product purchasers, collected by the oil companies and now turned over to the government.

## II. THE STATUTORY BACKGROUND

An explanation of why the Administration's PORF proposal is improper must start with the statutory and regulatory basis for DOE's enforcement actions and its collection of overcharge funds. The oil overcharge funds which the Administration wishes to place in the PORF have been or will be recovered from firms and individuals accused of violating the Department's statutes and regulations by charging illegal prices for their petroleum products between 1973 and 1981. The Department's actions are based on Section 209 of the Economic Stabilization Act of 1970, as amended, 12 U.S.C. Sec. 1904 (note) ("ESA"),[3] which is the principal governmental tool for correcting violations of DOE's orders and regulations. DOE's central concern must be enforcement of the Economic Stabilization Act. "The primary underlying policy of the ESA is to insure effective enforcement of the pricing regulations, on a national scale." Citronelle-Mobile Gathering, Inc. v. Edwards, 669 F.2d 717, 721 (TECA 1982), citing Bulzan v. ARCO, 620 F.2d 278 (TECA 1980). Thus, the government brings actions under §209, or seeks settlement of its allegations, not as a claimant or as an injured party, but rather as the enforcer of federal laws.

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[3] Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. Sec. 754(a)(1), carries Sec. 209 of the ESA forward into DOE's current enforcement authority.

At the core of the government's enforcement actions under §209 is the principle of restitution. Restitution is an equitable remedy which serves two purposes. First, it ensures that ill-gotten gains are disgorged by the offending party. Second, and equally importantly, it distributes those gains in a manner that remedies past injuries. "In equity, restitution is usually thought of as a remedy by which defendant is made to discharge ill-gotten gains or to restore the status quo or to accomplish both objectives." Sauder v. DOE, 648 F.2d 1341, 1348 (TECA, 1981), quoting 5 Moore's Federal Practice ¶¶ 38.24[2], 38.195 (2d ed. 1981). Because a central purpose of restitution is "to make victims whole, so far as possible," Citronelle, 669 F.2d at 772, funds recovered from violators of pricing regulations rightfully belong to the oil purchasers who were injured and not to the government.[4] It is therefore clear that in enforcing Section

---

[4] In contrast, Sec. 208 of the Economic Stabilization Act establishes sanctions in the form of fines and penalties -- clearly funds to be deposited in the U.S. Treasury. This contrast has been recognized by the Department in its Subpart V regulations, which govern the distribution of refunds made to remedy the effects of oil overcharge violations. 10 C.F.R. Part 205, Subpart V. In promulgating the Subpart V regulations, the Department of Energy explained, "The refunds contemplated in these regulations involve only overcharge amounts, not penalties, and consist only of revenues that the firm involved was never entitled to receive." 44 Fed. Reg. at 8564 (February 9, 1979).

209, the government must try to use the funds it recovers for the benefit of oil purchasers who were victims of the overcharges.[5]

## III. THE PORF PROPOSAL IS NOT RESTITUTIONARY AND WOULD PREVENT RECOVERY BY INJURED CONSUMERS OF OIL

A fundamental shortcoming of the PORF proposal is that it ignores the nature of the funds recovered from the oil companies. The Administration's legislation would treat oil overcharge funds as if they were tax receipts, subject to federal appropriation. This approach fails to recognize that the funds recovered through enforcement of Section 209 do not belong to the government, and must be returned to consumers who were injured by the overcharges. The government's discretion in distributing these funds is limited; that is, the government has a duty to allocate the funds in a restitutionary fashion.[6]

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[5] The government cannot claim that the funds collected in oil overcharge proceedings belong to it through escheat. The Supreme Court has defined escheat as "a procedure whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." Texas v. New Jersey, 370 U.S. 674, 675 (1965). Federal courts have repeatedly noted that the federal government cannot claim federal funds by escheat. See, e.g., Hodgson v. Wheaton Glass Co., 446 F.2d 527, 535 (3rd Cir. 1971); see also United States v. Klein, 303 U.S. 276 (1938); Klein v. Brodbeck, 15 F. Supp. 423 (E.D. Pa. 1934). Even if funds could escheat to the United States, such a result would not be available here. The oil overcharge funds are clearly not "abandoned property," and there is a legitimate class of claimants to the funds involved.

### A. The Nature of Restitution Under the ESA

In construing the Economic Stabilization Act, the federal courts have recognized that DOE overcharge moneys belong to petroleum purchasers, and that any disposition of those moneys must accomplish a restitutionary result. For example, in *Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F.2d 717 (TECA), *cert. denied*, 444 U.S. 879 (1982), the Temporary Emergency Court of Appeals reversed a district court order which had required that oil overcharge money collected in a Section 209 action be deposited in the U.S. Treasury. The TECA held that such an undifferentiated payment to the Treasury "is not restitution, in the true sense of the word, or in the objectives of the statutes here involved," 669 F.2d at 722, and stated "the Government has a *duty* to try to ascertain those overcharged, and refund them, with interest, from the restitution fund." 669 F.2d at 723 (emphasis in original). In a later case, United States v. Exxon Corp., 561 F. Supp. 816 (D.D.C. 1983), Judge Flannery held that oil overcharge funds to be deposited in a DOE escrow account should not remain in the Treasury, but rather should be distributed to consumers using state energy programs as a conduit.[7] In short, the decisions in these cases reflect the courts' recognition that the government does not own the overcharge funds collected in oil overcharge proceedings, that the funds cannot simply be deposited in the Treasury, and that they must be used, on behalf of those injured, to make up for past injuries.[8]

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[6] This duty was considered by the Supreme Court in *Porter v. Warner Holding Co.*, 328 U.S. 395 (1945), where the Court stated that restitution requires the courts "to act in the public interest by restoring the *status quo* and ordering the return of that which rightfully belongs to the purchaser or tenant." *Id.* at 402. In *Porter*, the Administrator of the Office of Price Administration had sued to enforce compliance with rent ceilings established under the Emergency Price Control Act of 1942. The case required rents collected by landlords in excess of the permissible maximums to be restored to tenants.

The General Accounting Office ("GAO") has also recognized that the government cannot simply retain oil overcharge funds, that all efforts must be made to identify persons or classes of persons overcharged and provide refunds to them, and that indirect distribution to injured persons -- such as distribution through the states -- must be considered before funds can be deposited in the Treasury. GAO has stated that DOE exceeds its statutory authority when it deposits funds directly into a miscellaneous receipts account at the Treasury without prior efforts at restitution to overcharged purchasers, including the ultimate consumers of oil. _See_ Comptroller General Decision B-209699, May 19, 1983; Comptroller General Decision B-200170, April 1, 1981. In its May 19, 1983 opinion, the GAO concluded that providing funds to the states for distribution through approved energy programs to injured consumers was an appropriate remedy under Section 209. The GAO concluded,

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[7] In designing appropriate relief in Exxon, Judge Flannery modeled his remedy on a recent Congressional action, the "Warner Amendment," which acknowledged that the oil overcharge funds held by DOE are subject to special limitations, and that they can only be distributed in a manner which effects restitution. The Warner Amendment is discussed in detail below at pp. 23-25.

[8] In Getty Oil Co. v. Department of Energy, 569 F. Supp. 1204 (D. Dela. 1983), a district court concluded without discussion that DOE's Office of Hearings and Appeals had not abused its discretion in requiring an oil company to pay overcharges into the Treasury, when the persons adversely affected by the overcharges could not be identified. The issue of the propriety of a Treasury deposit, as opposed to indirect mechanisms for distributing the funds, was not fully briefed and argued in that case.

> If, after Subpart V proceedings [the proceedings instituted by DOE's Office of Hearings and Appeals to distribute oil overcharge funds], no consumers or class of consumers can be identified, _and_ no restitutionary nexus for payments to states can be found, then deposit of overcharge funds in miscellaneous receipts is the only remaining authorized disposition. _This is appropriate only as a last resort disposition_....

Comptroller General Decision B-209699, May 19, 1983, at 15-16 (emphasis added).

Thus, the GAO concludes that the government must make restitution to every purchaser or class of purchasers who suffered injury, including restitution through such indirect mechanisms as state distributions, before considering any deposit into the U.S. Treasury's miscellaneous receipts account.

### B. The PORF Proposal Is Inconsistent With the Restitutionary Principles Applicable to Oil Overcharge Funds

The PORF proposal seeks to do precisely what the restitutionary principles of Section 209 (as defined by court decisions, GAO opinions, and OHA consent orders) prohibit -- it will deposit overcharge funds into the Treasury without making an appropriate effort to return the funds to the class of injured consumers. Although the PORF legislation makes no reference to Section 209 of the Economic Stabilization Act, it would in fact strip DOE's Office of Hearings and Appeals ("OHA") and the courts of their existing power under that statute to structure a remedy that benefits injured oil consumers. PORF would force the agency and the federal courts to distribute oil overcharge money to large commercial users and the U.S. Treasury, while excluding the ultimate consumers of petroleum products who bore the burden of the overcharges.

Under the PORF bill, federal courts would have no discretion at all to structure a particular restitutionary remedy -- all overcharge amounts would be subjected to the procedure in the PORF proposal and simply turned over by the court to the Secretary of Energy. The Secretary, in turn, could only distribute overcharge funds to persons who could prove that they were injured in a specific fashion. The bill would prohibit distribution where persons who sustained "economic injury" could not reasonably be identified, where the amount of the injury cannot reasonably be determined, or where the amount of injury was so small that distribution would not be reasonably feasible. Section 3(b). As a practical matter, therefore, the PORF bill would prohibit OHA and the courts from protecting the rights of the ultimate consumers of oil.[9]

The Administration may argue that, even if the procedure to be followed by the Secretary favors only major purchasers, the distributions from PORF will benefit injured consumers of oil, much like the Warner Amendment and the present OHA distributions. This argument is incorrect. First, unlike the Warner Amendment and the recent OHA consent orders, both of which use the state distribution mechanism under similar guidelines, the funds in PORF would not be used to redress past injuries, but rather would be used only to replace future appropriations. As will be discussed below, pp. 23-25, the Warner Amendment (and the recent OHA consent orders) allocated money to injured consumers by supplementing federal programs, not by supplanting them. In contrast, the PORF proposal would do nothing to redress the past injuries of ultimate consumers who bore the brunt of the overcharges.[10]

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[9] While individual consumers could theoretically present claims to the Secretary under the PORF proposal, it is unlikely they would be able to meet the requirements of proof imposed. Consumers are handicapped under existing OHA procedures by their lack of records concerning events which may have occurred as many as 11 years ago, and the small size of their claims.

The second fallacy in the Administration's argument is that unlike the Warner Amendment distribution mechanism, the PORF proposal would not benefit the class of persons who were injured by the overcharges. To assure that the allocation of funds benefitted the class of consumers who suffered the initial injury, the Warner Amendment distributed funds to the states in proportion to their consumption of petroleum products during the years of the overcharge funds.[11] In contrast, PORF funds would be provided to three federal energy programs for distribution pursuant to statutory formulas which have nothing to do with the source and distribution of the overcharged amounts.

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[10] In the two cases involving the most significant oil overcharge recoveries, federal judges have recognized that consumers have borne the burden of such overcharges. United States v. Exxon Corp., 561 F. Supp. 816, 853 (D.D.C. 1983); In re Department of Energy Stipper Well Exemption Litigation, MDL 378 (D. Kan. Sept. 13, 1983), slip op. at 14, 15.

[11] In passing the Amendment, the Senate rejected proposals which were not based on the logical restitutionary link between a state's residents' past use of oil and the receipt of oil overcharge funds. For example, the Senate refused to adopt an amendment offered by Senator Johnston which would have expanded the funding formula to allow distribution to natural gas consumers as well as oil consumers. Senator Warner explained why this amendment could not properly be adopted. "The classes of consumers who were injured have been identified on a statewide basis, and they can be repaid
(Footnote continued)

Third, the PORF proposal is not consistent with the procedures currently followed by OHA, and would eliminate an evolving, and promising, distribution mechanism which OHA is instituting for unclaimed funds. That mechanism, operating as the second stage of OHA's claims procedure (10 C.F.R., Part 205, Subpart V), has involved distribution of unclaimed funds through the states, an approach found by OHA to be efficient and suitable to the restitutionary ends of the enforcement program. State allocations are based on state shares of the national sales of the product in question.

As most recently enunciated with respect to the distribution of $24 million from a settlement with Standard Oil of Indiana (Amoco), the mechanism requires the submission to OHA of a state plan describing the intended state use of the funds, showing how the funds will benefit purchasers of

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11(continued)
according to the formula in the amendment -- you can assume there is some relevance between those overcharges and the amount of petroleum in the States, but you cannot make the assumption that there is any relationship between use of natural gas the the overcharges that have been paid into the escrow account." 128 Cong. Rec. S 15126 (Dec. 16, 1982) (daily ed.).

the products in question, and demonstrating the restitutionary nexus between the use and the underlying overcharge. 49 Fed. Reg. 8072 (March 5, 1984).[12] The order goes on to require that the funds must not be used as a substitute for government funds in the implementation of programs that would otherwise be funded by the state. "In other words, the money distributed to the states should be used to supplement, not supplant, any state or federal funds which are already budgeted for those purposes." (Emphasis added.) Id. at 8075. Finally, the order specifically says that plan submissions will be scrutinized to ensure minimal administrative cost allocations (a footnote signifies that 5% will be considered a standard amount).

In short, through the administrative process, DOE is already developing a system for returning the benefits of accumulated funds to purchasers of the products in question. It is a system which allocates the funds in accordance with the likely distribution of the injury. And it is a system which, while ensuring significant state flexibility, seeks to ensure that the funds in fact orient benefits toward past injury.

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[12] In the Amoco order, OHA explicitly says that state governments are deemed an appropriate means of "channeling the benefits of the consent order moneys to persons who most likely were injured by the consenting firm's regulatory practices." Id. at 8074. Thus, under the current OHA procedure, funds are clearly not being distributed for the benefit of the states themselves.

The PORF proposal is not grounded on any such restitutionary principles. There is little assurance that proceedings conducted by the Secretary would result in distributions to any but the largest commercial sellers and consumers. Further, the funds going to the states would bear no relationship to past, present or future oil consumption. Most importantly, rather than using the funds to supplement current programs, the PORF proposal would directly replace other funds currently available, providing no remedy for past injury. The restitutionary purpose of §209 and the efforts of federal courts and OHA to carry out those purposes would therefore be thwarted, and the persons most injured by overcharges left without a remedy.

## IV. THE PORF PROPOSAL VIOLATES THE GOVERNMENT'S FIDUCIARY RESPONSIBILITIES WITH RESPECT TO OIL OVERCHARGE MONEY

The preceding section demonstrates that the PORF proposal would effectively alter Section 209 to prevent any further recovery of oil overcharge funds by injured consumers. This result conflicts with more than the policies underlying Section 209, however; it also violates the government's fiduciary duty to protect the interests of the consumer beneficiaries of the overcharge fund.

### A. The Government's Duty With Respect to Oil Overcharge Funds Is the Same as that of a Trustee

Since the funds in question here belong to persons who suffered from oil price overcharges, and since those funds cannot simply be claimed by the government, the government's role is essentially that of a fiduciary, with the responsibilities of a constructive trustee. General principles of trust law should therefore guide the government's actions with respect to these funds.

Courts have held that where money has been collected by the government as an enforcer of the law, such funds are deemed to be held in a "constructive trust" pending return of them or their benefits to consumers. For example, in Emery v. United States, 186 F.2d 900 (9th Cir. 1951), cert. denied, 341 U.S. 925 (1951), the court utilized such a trust on a temporary basis. There, the judgment of the district court required that the overcharges recovered would be paid to the Treasurer of the United States. However, the court's order also provided that,

> This money was to be disbursed by the United States government to the renters who were the victims of the overcharges. This money is held by the government in trust for these tenants.... The tenants may or may not take advantage of their right under such an arrangement where they are the beneficiaries of this constructive trust.

Id. at 902. See also Citronelle-Mobile Gathering, Inc. v.

Edwards, 669 F.2d 717 (TECA 1982).

The central purpose of imposing a constructive trust is to prevent the unjust enrichment of persons or institutions in possession of property that is not their own. For example, in Emery, the undifferentiated deposit of funds recovered from price overcharges would have resulted in an undeserved windfall for the U.S. Treasury. The purpose behind imposing a constructive trust is also spelled out in other cases involving private parties, such as Burgess v. Williamson, 506 F.2d 870, 876 (5th Cir. 1975). There, the court described such a trust as "a creation of equity which operates to prevent unjust enrichment."[13]

The principles in these cases are applicable here. The government has a statutory duty pursuant to Section 209 to protect the interests of injured consumers; that duty creates a fiduciary relationship with those consumers which governs the manner in which the government deals with the consumers' funds. Moreover, as in the Emery and Burgess cases, appropriation of those funds to the U.S. Treasury would result in unjust enrichment of the government.

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[13] In that case, the plaintiff sued her brother for an accounting and damages as to the handling of their mother's finances. The court granted that "[t]echnically, the son was neither a guardian nor a trustee in his relationship with his mother." Id. at 874. It stated, however, that the defendant-son was his "mother's 'fiduciary' in the management of her investments," and that as such, he "was unquestionably subject to essentially the same basic fiduciary duties as a guardian, a trustee, or any other fiduciary, however they might be related...." Id. at 874.

### B. The PORF Proposal Violates the Government's Fiduciary Duties

As discussed above, restitution requires that the government attempt to make whole the victims suffering from past injuries. Citronelle-Mobile Gathering, Inc. v. Edwards, 669 F.2d 717 (TECA 1982). Where the injuries have been widespread, the government has met this duty by distributing funds to classes of persons who were injured by past practices. United States v. Exxon Corp., 561 F. Supp. 816 (D.D.C. 1983). Never, however, have those who recovered been required to give up future benefits as a condition of recovery.

The PORF proposal seeks to do just this for low-income consumers: to cancel future benefits in exchange for compensation for past injuries. The effect of the PORF proposal would be simply to substitute money which properly belongs to overcharged purchasers, and which was obtained by the government for the sole purpose of remedying past injury, for money that would otherwise be appropriated by Congress from general revenues.

To evaluate the propriety of this aspect of the PORF proposal, it is helpful to consider the government's obligations in traditional trusteeship terms. In general, a trustee has the "duty to take whatever steps are necessary, in accordance with the skills and prudence of an ordinarily capable businessman managing his own property for like ends, to protect and preserve the trust property from loss or damage." George C. Bogert and George T. Bogert, LAW OF TRUSTS §99 at 361 (5th ed. 1973) (hereinafter "Bogert") (emphasis added).

To that end, a trustee has special obligations with respect to property in his possession. For example, he has an obligation to separate and earmark trust property. Bogert §100 at 362. Segregation is necessary to prevent the trustee from using trust assets for his own advantage and to ensure maximum accountability. "Equity demands that the trustee keep trust property physically separate from other property which he has in his possession either as bailee, owner, or as a holder in another fiduciary capacity." Bogert §100 at 363. Commingling of trust assets and those of the trustee is therefore strictly prohibited.

Further, a trustee is held to a high standard of loyalty, Bogert §95. He "owes a duty to the beneficiary to administer the affairs of the trust in the interests of the beneficiary alone, and to exclude from consideration his own advantages and the welfare of third persons." Bogert §95 at 343. If the trustee is motivated by a desire to enrich himself or a third person, his actions are subject to attack on the general ground of disloyalty. The loyalty standard therefore precludes any act of self-dealing on the part of the trustee.

In light of these trusteeship obligations, the PORF "appropriation" violates the government's fiduciary duties. The allocation of funds to PORF is, in effect, the taking of a trust fund and using it for general government purposes. While the ultimate distribution of PORF funds would be to certain energy-related programs, the funds actually would be used only to replace moneys that normally would have to be collected through taxes.[14] Thus, the PORF proposal would be equivalent to the diversion of trust funds into uses unrelated to petroleum overcharges. Since the oil overcharge money reduces appropriations, the government may well be using oil overcharge funds in defense or agricultural programs, or to reduce the federal deficit. In such cases, oil overcharge moneys entrusted to the government will have been commingled with the government's own funds and any accountability to petroleum consumers will be extinguished. This result is directly contrary to the trustee's obligation to "protect and preserve" the trust property for the beneficiary. Bogert, §99 at 361.

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[14] As noted above, PORF adds no _new_ money to the three programs; it sets their authorization ceiling at or below the funding level recently provided by Congress. To the extent PORF money is available, no appropriations will be made.

More importantly, this diversion of trust funds violates the government's duty of loyalty and its obligation to avoid self-dealing, i.e., actions which benefit the trustee at the expense of the beneficiary. As already noted, the PORF proposal simply supplants future appropriations with funds that should have been made available to consumers. Such an action, if undertaken by a trustee, is disloyal and unlawful. The effect of this disloyalty is of course heightened by the fact that the short-changing of consumers is done for the government's own benefit. In the short term, the Administration's legislation simply reduces its current budget deficit. In the longer term, as explained below in Section VI, it will undermine the status of low-income energy assistance programs altogether by isolating them from normal budget processes and leaving them largely dependent on the vagaries of future DOE settlements and litigation. This type of self-dealing, and placing of the government's interests above those of the rightful beneficiaries of the trust funds, is a violation of the government's fiduciary obligations.

Comparison of the PORF proposal to Congress' earlier actions in dealing with oil overcharge funds further illustrates the impropriety of the Administration's actions and its legislative proposal. When Congress has considered the problem of distributing DOE's oil overcharge money in the past, it has been careful to assure that the federal government's fiduciary responsibilies are observed in making that distribution. For example, when Congress enacted the Warner Amendment, it assured that these funds were not improperly used as government money, providing,

> Amounts disbursed to the Governor of any state shall be used by the Governor as if such funds were received under one or more energy conservation programs.... Funds disbursed under this section shall be used to supplement, and not supplant, funds otherwise available for such programs under Federal or State law.

H. Rep. No. 97-980, 97th Cong., 2d Sess. (1982) (emphasis supplied).[15] Therefore, Congress has already recognized that the government's duty to consumers prevents the substitution of consumer trust funds held by DOE for future appropriations to federal programs.[16]

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[15] Another similar limitation provides,

> [n]o funds disbursed under this section may be used for any administrative expenses of the Department of Energy or of any State, whether incurred in connection with any energy conservation program or otherwise.

Id.

[16] The legislative history of the Warner Amendment confirms that its purpose was to grant restitution to injured oil consumers. See Statements of Sen. Warner (purpose was "to provide needed financial assistance to the States to provide relief from past energy overcharges"), 128 Cong. Rec. S 15115-16 (Dec. 16, 1982) (daily ed.); Sen. Hatfield (Amendment would "equitably and expeditiously compensate individuals who were injured by petroleum pricing

(Footnote continued)

To summarize, the PORF proposal diverts the overcharge money into the general U.S. Treasury and then uses those funds to substitute for anticipated federal funding in several areas that benefit consumers. This procedure operates to the benefit of the U.S. Treasury, but not for the benefit of injured consumers. The PORF proposal therefore violates the government's fiduciary obligations to overcharged purchasers of petroleum products.

## V. THE PORF PROPOSAL'S ATTEMPT TO DIVERT MONEY ALREADY SUBJECT TO COURT ORDER MAY VIOLATE THE U.S. CONSTITUTION

The preceding sections of this memorandum explain that the PORF proposal is inconsistent with the law of restitution and principles of trusteeship. The proposal also raises an even more fundamental legal issue: it appears to violate the separation of powers provisions embodied in Articles I and III of the U.S. Constitution.

The largest single amount of money available to fund the PORF proposal is now subject to litigation in the case of

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16(continued)
violations"), Id. at S 15127; Sen. Kennedy (funds will be distributed to persons "adversely affected" by overcharges), Id. at S 15119; Rep. Dingell (Conference Committee's interest was in "overcharged consumers being made as whole as possible, as quickly as possible"), 128 Cong. Rec. H 10435 (Dec. 20, 1982) (daily ed.).

United States v. Exxon, 561 F. Supp. 816 (D.D.C. 1983).[17] In that case, Judge Flannery found that Exxon had violated DOE's pricing regulations, and exercised the discretion granted him under §209 to structure a restitutionary remedy; i.e., the oil overcharge funds would be distributed to the states for use in five energy conservation-related programs. Judge Flannery selected this restitutionary procedure in large part because of his finding that the financial effects of the overcharges were so broadly diffused that it would be impossible to calculate the damages suffered by the victims. DOE unsuccessfully argued against this remedy, contending that a direct deposit of the overcharges into the Treasury was appropriate. Having lost on this issue, the DOE initially indicated that it intended to appeal the remedial aspect of the case but later decided not to do so. Exxon, as well as others, did appeal both the liability and remedial aspects of this decision to the Temporary Emergency Court of Appeals. While the briefing before TECA is complete, the case has not yet been argued on appeal.[18]

The PORF proposal would have a direct impact on the outcome of this case, since it would overturn Judge

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[17] The second largest amount is that involved in the Stripper Well Exemption litigation, described below at pp. 33-34.

[18] On appeal, DOE is now supporting affirmance of Judge Flannery's order in its entirety.

Flannery's decision on the restitutionary remedy and preempt any decision by TECA on the proper type of restitution which can be established under Section 209. Rather than allowing distribution directly to the states, as Judge Flannery ordered, the PORF legislation would require the Exxon overcharges to go through an entirely different procedure. That procedure establishes an individual claims process before the Secretary of Energy and then, as explained above, requires the deposit of the remaining money into a special fund, which in operation is no different than a deposit in the U.S. Treasury. Thus, the PORF proposal would invalidate Judge Flannery's conclusion that the tracing of the economic effects of the overcharges is impossible, and require the substitution of a Treasury deposit, similar to that he declined to order, for the restitutionary remedy he devised.

This type of restriction of the courts' authority to structure restitutionary remedies under Section 209 raises especially serious questions when it is applied to already pending cases in which a remedial order has previously been entered, such as Exxon. While Congress could amend Section 209 prospectively to require a particular type of relief, it is not at all clear that the legislative and executive branches can step into an ongoing judicial proceeding and modify the judge's discretionary decision as to the form of restitution or other equitable relief. Such an action is particularly questionable where the federal government is itself a party to the litigation, declined to appeal the decision, and now seeks to overturn that decision -- through legislative action -- for its own benefit.

Although Congress unquestionably has the power to enact rules of evidence and jurisdiction prospectively, the Constitution establishes some limit on its authority to interfere in the judicial process. The leading case in this area is the Reconstruction-era decision, United States v. Klein, 80 U.S. (13 Wall.) 128 (1872), which the Supreme Court recently explained and approved in United States v. Sioux Nation of Indians, 448 U.S. 371, 400-409 (1980). The holding in Klein, as explained by the Court in Sioux Nation, is that an act of Congress is unconstitutional if "it prescribe[s] a rule of decision in a case pending before the courts, and [does] so in a manner that require[s] the courts to decide a controversy in the Government's favor." Sioux Nation, 448 U.S. at 404.

In Klein, the Court considered two statutes. The first, passed in 1863, authorized the United States to confiscate abandoned and captured rebel property, and required persons wishing to recover their confiscated property to prove in the Court of Claims that the property had not been used in aid of the rebellion. Because the President subsequently granted a virtually universal pardon with full restoration of property rights, however, most applicants to the Court of Claims could have won back their property without making the showing intended by Congress. Consequently, Congress passed another law in 1870 that prohibited the Court of Claims from receiving any claimant's pardon into evidence, requiring him or her to prove loyalty irrespective of the pardon. At the same time, the statute provided that the grant of a pardon would be conclusive evidence of the acts pardoned (i.e., of acts of rebellion), unless the person receiving the pardon had disclaimed or protested his or her guilt when the pardon was accepted.

The Supreme Court struck down this statute as an unconstitutional interference with judicial power. The Court held that the law of 1870 "prescribe[d] a rule for the decision of a cause in a particular way." The Court declared that Congress could not wait until the courts found a certain set of facts, and then withdraw the case from the courts' jurisdiction, when the United States was itself a party. The Court stated that the statute "allow[ed] one party to the controversy to decide in its own favor," and concluded, "We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power." Klein, 80 U.S. (13 Wall.) at 147.

The fundamental principles enunciated in Klein suggest that the PORF proposal also violates the principle of the separation of the judicial and legislative powers of government. In essence, PORF attempts to reverse an adverse decision by a federal district court so that the results of the litigation favor the U.S. government.

In Exxon, for example, the federal district court structured a remedy, under the authority delegated to it by Congress, to redress the injuries of millions of ultimate consumers of oil. The court considered and rejected the government's suggested remedy, which would have required the deposit of the oil overcharge money in the U.S. Treasury. The Department of Energy had an opportunity to appeal this adverse decision and chose not to do so. Now, using the PORF legislation, the Administration seeks to intervene at the appellate stage, seize the funds subject to court order, and appropriate them to the U.S. Treasury -- the exact result the court rejected. The PORF proposal therefore appears to be a thinly disguised attempt to dictate the result in pending litigation, and to require a result that favors the government's own interests.[19]

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[19] There are a number of cases, such as Sioux Nation, and Pope v. United States, 323 U.S. 1 (1944), where Congress has passed a law that gives claimants against the United States new rights in pending actions. As the Court pointed out in Sioux Nation, however, in those cases the United States simply waived its own legal defense or agreed to establish a legal right to a moral claim against itself. The Court distinguished that situation from one where the government sought to require a decision in its own favor in a pending case. Sioux Nation, 448 U.S. at 405.

Thus, this situation closely parallels the one considered in Klein. In light of that case, and the Supreme Court's continuing close scrutiny of legislation which may violate separation of powers doctrines, such as INS v. Chadha, 103 S.Ct. 2764 (1983) (unconstitutionality of legislative veto) and Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) (unconstitutionality of Bankruptcy Reform Act of 1978), the PORF proposal is constitutionally suspect.

## VI. THE PORF PROPOSAL WILL JEOPARDIZE FUTURE FUNDING FOR THREE FEDERAL ENERGY PROGRAMS

The PORF proposal is undesirable not only because it is inconsistent with the government's duties under the ESA and as a trustee, and because it may well be unconstitutional, but also because it will have severe practical consequences for the three federal programs it proposes to fund. At the outset, it must be noted that the moneys available through PORF will not be adequate to fund the three federal energy programs identified in the Administration's legislation; additional funds will have to be appropriated if current levels are to be maintained. The Administration's budget implies that its PORF proposal will maintain the current level of funding for federal energy programs at $2 billion for FY 1985. However, the amount of overcharge funds currently in the government's hands is far short of $2 billion, and such an amount will not become available by the beginning of FY 1985, or perhaps for years to come.

One of the sources of funds on which PORF would draw is the money already held by DOE -- there may be between $400 and $450 million in overcharge funds currently at the Department of Energy. However, much of that money is the subject of on-going Office of Hearings and Appeals administrative proceedings, designed to identify injured parties or otherwise make distributions of residual funds. At best, only a portion of these moneys would remain unclaimed and, since the Administration's legislation would allow some form of this claims process to continue, several years may elapse before the amount of funds remaining is known. The PORF proposal cannot realistically rely on these funds.

The Administration's financial assumptions appear, therefore, to be based primarily on the recovery of overcharge amounts in the pending _U.S. v. Exxon_ litigation. While the _potential_ recovery in the _Exxon_ case may be above $1.8 billion, it is currently the subject of an appeal to the Temporary Emergency Court of Appeals. Court action is very unlikely to be completed by the beginning of FY 1985.[20] When the case is finally resolved, TECA, or the Supreme Court, could find that Exxon did not violate the law or that the amount of Exxon's liability should be reduced. Thus, even if a statute stepping into the ongoing litigation and reversing the district court's remedial order were constitutional, determination of the amount of funds available must await completion of the judicial process.

The only other major potential source of funds for PORF, In re Department of Energy Stripper Well Exemption Litigation, MDL 378 (D. Kan. Sept. 13, 1983), could not conceivably produce funds before mid-FY 1985, or perhaps FY 1986. The court has sought the advice of the Office of Hearings and Appeals concerning the proper disposition of the funds, and OHA has instituted a rulemaking to determine what it will recommend to the district court. 48 Fed. Reg. 57,068 (December 30, 1983). On March 12, 1984, OHA reported to the district court that it would institute a series of hearings "to examine the impact of crude oil overcharges at each level in the chain of distribution for petroleum products." Report of the Office of Hearings and Appeals of the Department of

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[20] TECA is unlikely to reach a decision before mid-summer 1984 -- oral argument is scheduled for late May -- and even if TECA affirms the district court's judgment, Exxon would in all likelihood seek Supreme Court review. In that event, the case may not be resolved until well into fiscal year 1985, or beyond.

Energy (March 12, 1984), p. 4. Once OHA's hearings are complete and its recommendation as to standards and procedures made, the court will itself presumably conduct a hearing or at least consider arguments on OHA's recommendation. Finally, once the district court enters an order, an appeal on the proposed distribution procedure is likely to follow.

It could therefore be several years before the amount of money available to the PORF is established.[21] But even if all of the funds on which the PORF concept can rely were actually available, reliance on oil overcharge money for future funding of energy assistance programs is unrealistic and extremely dangerous. At some point, there will be no more oil overcharge funds available.[22] To the extent funding for low-income energy assistance programs becomes largely dependent on non-appropriated money (i.e., money obtained from oil overcharges rather than taxes or other traditional revenue sources), it may be extremely difficult to reinstate those programs in the budget and obtain appropriations for them. Practical experience with the budget process in a time of growing deficits and shrinking revenues suggests that the practical result of the PORF proposal may well be to eliminate these programs altogether within a few years.

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[21] As explained above in Section V, there are serious constitutional questions as to whether these funds are available at all. The need for the courts to resolve these difficult issues could substantially delay use of the Exxon and Stripper Well funds for any purpose.

[22] The Exxon and Stripper Well litigations together involve less than $3 billion, which would provide funding for only one and one-half years of the three programs identified in the PORF proposal. Further, there have been no significant oil overcharge settlements for over a year; even if more settlements were reached, the amount of those settlements in the past has generally been no more than $25 million.

## CONCLUSION

The PORF proposal would result in a fundamental alteration of the remedial structure adopted by Congress in the Economic Stabilization Act, and would misappropriate funds that do not belong to the government at all. Rather than providing some form of restitution to those overcharged, the government's enforcement actions would simply become an adjunct to the federal budget process. The oil overcharge funds, which should be used by the government to benefit low-income consumers and others who suffered from past price violations, would instead be used to supplant funds that would normally be collected through taxes. Restitution for past injury would be available to low income consumers only at the expense of surrendering the future benefits of energy conservation and low-income energy assistance programs. The PORF proposal is therefore inconsistent with both Congress' purposes in establishing a procedure for restitution and the government's own obligations to exercise fiduciary responsibility with respect to the funds it collects. Moreover, the application of the proposal to ongoing appellate litigation raises serious constitutional questions, since it may violate the separation of powers principles embodied in Articles I and III.

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# APPENDIX II

## Additional Material Submitted for the Record

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BILL SHEFFIELD
GOVERNOR

D-R-A-F-T

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

April 24, 1984

See attached list of addresses

Dear ______________:

I wish to express the opposition of the State of Alaska to H.R.4972 and S.2370, legislation which would substitute oil overcharge refunds for regular energy conservation and assistance appropriations. The legislation introduced at the request of the Administration is based on several incorrect assumptions:

- o The intention of the litigation to recover oil overcharges is to provide restitution to remedy the wrongs done to injured parties. The legislation proposed by the Administration disregards this purpose.
- o The $1.6 billion judgment against Exxon, which the legislation assumes would be placed in a fund to support the "Petroleum Overcharge Restitution Fund", is currently undergoing appeal. In our judgment, Congress should not either interfere with ongoing litigation of prescribe a remedy once the Exxon litigation is completed. The district court has already ordered a specific remedy and distribution plan for these funds, which the Administration declined to appeal in the Exxon case decision.
- o The legislation incorrectly treats the oil overcharge refunds as if they were federal funds. The court decision stated that these funds are only held on a temporary basis by the federal government until restitution to injured parties can be achieved.

The State of Alaska wholeheartedly supports the present Department of Energy Office of Hearings and Appeals' procedures which provide opportunities for injured parties to prove that they are eligible to receive refunds. Once claims have been settled under this process, the states then serve as a conduit for refunds to consumers through existing energy conservation and assistance programs.

The energy assistance, conservation, and education programs are of particular importance to Alaska because of our harsh climate and extremely high energy costs. Over the years, Alaskans have depended upon all of the energy assistance and conservation programs in managing the burden of high energy costs.

Thank you for your consideration of our views.

Sincerely,

Bill Sheffield
Governor

cc: Delegation

bcc: Commissioner Notti
Jim Dahlman
Robert Brean

Address List

The Honorable James A. McClure
Chairman
Appropriations Subcommittee on
Interior and Related Agencies
Committee on Energy and Natural
Resources
SD-114 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
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The Honorable Sidney R. Yates
Chairman
Appropriations Subcommittee on
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The Honorable William H. Natcher
Chairman
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The Honorable Jamie L. Whitten
Chairman
Committee on Appropriations
H-218 Capitol Building
Washington, D.C. 20515

The Honorable Mark Hatfield
Chairman
Committee on Appropriations
SD-118 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Statement of the Air Transport Association
of America on the Petroleum Overcharge
Restitution Act (S. 2370)
Before the Subcommittee on Energy Conservation
and Supply
Of the United States Senate Committee on Energy
June 14, 1984

The Air Transport Association of America (ATA) represents the U. S. scheduled airline industry. Its member carriers, being substantial consumers of petroleum products, have a major interest in the Department of Energy's (DOE) enforcement of the petroleum price and allocation regulations which were in effect during most of the last decade. On the basis of past enforcement actions initiated by DOE, it seems clear to ATA that its members, as well as other petroleum consumers, were overcharged by petroleum suppliers. As identifiable consumers, moreover, the airlines believe they are entitled to receive restitution from DOE's settlement activities. The proposed Petroleum Overcharge Restitution Act, on the other hand, appears to be an attempt to evade this most appropriate of all remedies, restitution.

ATA's interest in securing restitution from DOE's enforcement actions dates back to late 1976. In furtherance of this goal, ATA has participated in rulemakings, comment procedures on specific consent orders, public hearings, congressional hearings, special refund proceedings and court actions. To date, this lengthy involvement has resulted in its members receiving approximately $3.3 million in refunds/credit memoranda from jet fuel suppliers, which is less than 5% of the industry's annual fuel bill. Moreover, these amounts have come primarily from settlements with smaller suppliers. Negotiated settlements with major suppliers of jet fuel, such as Chevron and Conoco, contained no provisions for direct refunds for carrier customers, so restitution of overcharges attributable to those suppliers is permanently lost to the air carriers.

If legislation in this area were to be enacted, ATA would urge that it contain specific endorsement of restitution as the primary and most appropriate remedy for refiner overcharges. In furtherance of this remedy, DOE should be directed to initiate refund procedures for all settlements, judgments or orders that include restitutionary amounts. Such a directive would, of course, also be relied on by the courts which are called upon to consider refiner overcharge issues.

In this connection, ATA supports legislative recognition of the special refund procedures contained at 10 CFR Part 205/Subpart V, and the decisions issued pursuant to these procedures. ATA also supports automatic referral of restitutionary procedures, including the opportunity for purchasers to present claims, to DOE's Office of Hearings and Appeals. In short, restitution should be DOE's primary concern in the refiner overcharge area, and DOE should be empowered to use overcharge monies for other purposes only after refund efforts have been completed.

ATA does not believe that claimants in restitutionary procedures should be required to bear a burden of proof of overcharge that is impossible to meet. Reasonable approximization of injury should be accepted. In that way, refunds will be maximized.

ATA is, of course, aware that a sustantial amount of overcharges are likely to have been passed on to individual purchasers of home heating oil, gasoline and diesel fuel, for example. It is unlikely that these individual purchasers will file refund claims. As a result, portions of overcharge amounts will remain in escrow accounts. ATA is not opposed to the eventual disbursement of these funds to the states for use in such areas as energy assistance to the poor. ATA believes, however, that the intended beneficiaries of the residual monies, as detailed in §4 of S. 2370, are too limited. An effort should be made to establish a nexus between those injured and those receiving benefits. If, for example, portions of the residual funds are unclaimed jet fuel monies, it would be inappropriate to return these funds to heating oil consumers; rather, an aviation related enterprise within the state, e.g., an airport, would be a more appropriate beneficiary.

ATA also believes it appropriate for the Congress to consider the advisability of imposing lesiglative deadlines on certain aspects of DOE's enforcement activities. For example, deadlines for completing audit work and issuing proposed remedial orders appear reasonable. Expediting hearing procedures could also be evaluated.

In conclusion, ATA finds S.2370 to be deficient in a number of areas. Its failure to mandate restitutionary procedures is most critical. As a result, ATA opposes this legislation.

The Attorney General of Texas

JIM MATTOX
Attorney General

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June 11, 1984

Honorable Lowell P. Weicker
Chairman, Senate Subcommittee, Energy
Conservation and Supply
Senate Energy and Natural Resources Committee
Senate Dirksen Office Bldg., Room 308
Washington, D. C. 20515

Dear Senator Weicker:

On behalf of the State of Texas, I respectfully submit the enclosed written comments applicable to S.2370 scheduled to be heard by your subcommittee on June 14, 1984.

If I may be of additional assistance in these regards, please feel free to call upon me.

Sincerely,

Jim Mattox

JIM MATTOX
Attorney General of Texas

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JM:lsr

BEFORE THE SENATE SUBCOMMITTEE

ON ENERGY CONSERVATION AND SUPPLY

| | | |
|---|---|---|
| THE PETROLEUM OVERCHARGE<br>RESTITUTION ACT | §<br>§<br>§<br>§<br>§ | S-2370 |

## COMMENTS BY THE ATTORNEY GENERAL OF TEXAS

The State of Texas, by and through its Attorney General on behalf of its citizens (Texas), request that the following comments be noted and printed into the Record. These comments are on the Petroleum Overcharge Restitution Act (PORA, Act, Bill) which is scheduled to be presented before the Senate Subcommittee on Energy Conservation and Supply, June 14, 1984. Texas believes that the enactment of this Bill is against the interest of the ultimate consumers of Texas and other states who have born the brunt of the alleged oil overcharges, which form the basis of proposed Petroleum Overcharge Restitution Fund (PORF, Fund). For the reasons discussed in more detail herein, Texas wishes to impress upon this Subcommittee its staunch opposition to this Bill, specifically that it should not be enacted in its present form, and request that this Subcommittee consider taking no further actions on this Bill.

## DISCUSSION

In its present form, PORA provides for distribution to the states of certain oil overcharge funds derived from the Department of Energy's (DOE) enforcement of the Mandatory Petroleum Price Regulations (regulations, price regulations).

Briefly, the Act provides for certain overcharge refund distribution procedures; the establishment of the Petroleum Overcharge Restitutionary Fund, and the discretionary authorization for appropriations by the Secretary of DOE (Secretary). In addition, the Bill requires that administrative or judicial findings and orders which favor the government in oil overcharge cases, provide that all restitutionary funds are to be paid to DOE. The Bill also requires the DOE to attempt to identify and make restitution to persons who sustained economic injury, and requires DOE to pay all remaining funds into PORF. Beginning in fiscal year 1985, the Bill provides that monies from the PORF are to be used by the states in certain federal funded programs administered by state governments (low income home energy assistants programs, school and hospital rent programs, and weatherization programs).

## A. The OHA Procedure Is Reasonable.

Although DOE has established regulations which allow it to, under some circumstances, order monies paid to the United States Treasury, (See, 10 C.F.R. §§ 205.199I,205.287(c)), if such order is made, such payment must be made pursuant to a remedial order under 42 U.S.C. § 7193(a), seeking to make restitution within the meaning of § 209 of the Economic Stabilization Act. (12 U.S.C. § 1904 note, as incorporated by reference in § 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §754(a)(1). Because § 209 does not specifically authorize payment to the treasury as an alternative to restitution, such payment, if legal, would have to be a restitutionary payment to a government representative for the benefit of unidentified victims of illegal overcharges. The applicable statutes do not express any preference for the federal government over the states as recipients of such an award in a parens patriae capacity.

In promulgating its Subpart V regulations DOE stated its expectation that the states would assert claims to receive refunds on behalf of their injured citizens "who would otherwise have no incentive to file." Preamble to Subpart V, Energy Mgmt. (CCH) Regulatory Preambles Vol., ¶40,408 at 40,979-44. OHA has specifically recognized the states as conduits to make restitution pointing out the relative efficiency and scope of the impact in proportion to the level of injury actually sustained. Amoco, 10 DOE (CCH) ¶85,048 at 88,207 (1982).

The primary procedure enacted by the Office of Hearings and Appeals, (OHA), the utilization of the Subpart V proceedings (10 C.F.R. part 205), is a working procedure. OHA has begun to utilize Subpart V procedures continuously in its remedial actions and has provided for public comment in Subpart V proceedings involving amounts in excess of $10 million dollars. See, 49 Fed. Reg. 12301. The enactment of PORA would unnecessarily curtail the progress OHA and other interested parties have made in developing a reliable remedial equitable restitutional procedure. Presently, funds derived from the overcharge cases are placed in an escrow trust account under the direction of OHA. Under Subpart V proceedings, OHA initiates two stages designed to make remedial restitution. In Stage One, those identifiable purchasers who can demonstrate an injury are provided an opportunity to submit claims and to provide evidence of their injury in order to qualify for a refund. In Stage Two, funds remaining after all identifiable injured parties who have submitted a valid claim and who have been provided a refund, are available for disbursement to 1) those unidentifiable injured claimants or 2) claimants whose injury cannot be specifically quantified. These claimants are given the opportunity to submit claims for refunds. In most cases, the states, on behalf of the unidentifiable claimants, develop proposed distribution methodologies for OHA's approval. Once a distribution methodology is approved by OHA, the states must develop and submit for OHA's approval a refund plan to disburse the received overcharge refunds for the benefit of its injured citizens. In developing its plans, the states must maintain the restitutionary nexus between the harm done (price overcharge for a particular product(s)) to the benefit received. Upon OHA's approval of a state's plan, the restitutionary funds are transmitted to the State for implementation.

The Subpart V procedure has been tried and is substantially successful. Therefore, it should be given an opportunity to develop, without the certain problems that PORA holds. PORA would basically eliminate the escrow trust account in which the restitutionary funds are now being deposited and subplant that account with PORF. By placing these funds in PORF, the funds become General Revenue Funds of the government and not Trust Funds held in escrow to make restitution.

## B. The Oil Overcharge Funds Are Trust Funds Not Federal Funds.

There is no need to establish a new fund in the Treasury because the oil overcharge funds are not federal funds but are restitutionary funds placed in trust for those who have suffered injury as a result of alleged violations of the regulations. As stated supra, the disbursements of these funds have been conducted without any substantial problems. A specific problem that the Bill would create is that it gives the Secretary carte blanc authority to identify and determine the amount needed to refund injured persons. This discretionary authority given the Secretary is apparently not reviewable. Such an unreasonable situation, in view of the more objective Subpart V procedure, instills an unnecessary and seemingly unlawful limitation on the distribution of these restitutionary funds. The General Accounting Office (GAO) in a decision issued on May 1, 1983, held that the funds in question are overcharges paid by various type of customers to oil companies and recovered by DOE to be placed in escrow. The GAO goes on to say that the funds are not federal funds or general revenues subject to congressional appropriations. If these funds were in fact federal funds, DOE would be required to deposit them into miscellaneous receipts account of the Federal Treasury for future appropriation. PORA, if enacted, would convert the restitutionary funds to federal or general revenue funds subject to congressional appropriations. Such appropriations would, in theory, replace existing appropriated funds by Congress with the restitutionary funds derived from the oil overcharges.

## C. The Restitutionary Trust Funds Should Not Be A Replacement For Appropriated Funds By Congress.

The PORA objective of providing funds for particular programs seems to be ostensibly very favorable. However, the methodology used in directing these funds i.e., through the PORF and this Bill generally, is designed to circumvent existing OHA regulations and, more importantly, would amount to a seizure by the federal government of funds held in trust for consumers who, long ago, bore the brunt of the petroleum overcharges. This Bill gives the federal government the authority to direct that these restitutionary funds are not to be used to make restitution to the injured consumer, but for funding programs already supported by the General Revenue (taxpayer) funds.

Under recent court and administrative decisions, the states, on behalf of unidentifiable injured parties, anticipate receiving a portion of these overcharges. To divert those funds and utilize them as substitution for General Revenue appropriations for existing federal energy programs, would result in substantial loss of funds to the citizens of the various states. Such use of the funds would be in conflict with the clear intent of Congress to support such energy programs from General Revenues. PORA therefore, contemplates the use of consumer funds with no additional benefit to consumers. The cost of funding the special energy programs, presently being funded by general appropriation funds would simply be shifted from these general revenue funds of the Treasury to the consumers who suffered the brunt of injury through enduring years of petroleum overcharges. Moreover, where these overcharge funds are used in lieu of appropriated General Revenue funds the requirement that the overcharge funds be used for restitution in every purpose is not being met. Such a result is directly contrary to Congressional intent expressed in the appropriation on the Warner Amendment. In enacting the Warner Amendment, Congress clearly recognized a distinction between general revenue funds and trust funds held in escrow for restitutionary purposes.

Clearly, the proposal to fund federal energy programs with revenue generated through petroleum industry reparations to aggrieved consumers, with the parallel consideration that such will supplant, not supplement the funds for existing energy programs, is a misapplication of such funds and a blatant attempt to subsidize the federal debt at the expense of the injured public.

### D. The Application Of The Warner Amendment.

The Warner Amendment was part of a "continuing resolution," and not an appropriations act. Further, the Warner Amendment did not appropriate escrowed funds, but legislatively directed that up to $200 million dollars of those funds be distributed by DOE to the states for energy conservation programs. The Warner Amendment included a stipulation that the funds must "supplement and not supplant" money already appropriated for identified energy programs. However, it is clear that this Bill views the overcharge funds as supplanting direct appropriations for the various programs, with no congressional precedent in support of such a plan.

These funds should not be diverted, legislatively, from trust restitutionary funds for overcharged customers, to federal general revenue funds subject to annual appropriations "and political tampering" in order to reduce the deficit of the current administration. There is no supportable explanation for deviating from the clearly stated intentions of Congress set forth in the Warner Amendment; including the formula for equitable distribution of the funds to the states. Although some changes may be more reasonable and appropriate, e.g., changing the kinds of energy related programs or emphasizing some other programs in order to ensure a better restitutionary nexus to the original overcharge, this Bill does not present any sound reasoning or urgency to stray from the approach presently administered by OHA, or followed by Congress in the Warner Amendment.

## E. PORA Will Not Ensure Continued Funding Of These Energy Programs.

PORA provides for certain designated energy programs primarily dependent upon the availability of funds anticipated to be recovered from oil companies for petroleum overcharges. However, there is no assurance that the amount of oil overcharge funds recovered will be sufficient to maintain these programs at desired levels in the years to come. Specifically, the funds upon which PORA relies to supplant existing appropriations, will primarily come from cases to be resolved by the courts. To make these energy assistance programs directly contingent upon recovery of overcharges derived from court decisions is an unreliable source of funding which could endanger the future of these programs. More importantly, in attempting to direct federal courts to pay DOE monies derived in cases still in litigation presents a legal concern which must be considered in any decision on this Bill. The substantive questions surrounding Congress' authority to effect matters in pending litigation must be addressed and completely resolved prior to any further consideration of PORA. It is unclear from the language of this Bill under what circumstances the government would move a Court to order restitution to the DOE general revenue fund. Texas would request the opportunity to provide legal memorandum addressing these issues.

## CONCLUSION

PORA does not sufficiently address the issues presented by the restitutionary distribution of the oil overcharge funds. At best, it can only be viewed as a futile effort to solve certain budgetary problems facing the current administration. The present system of utilizing Subpart V proceedings for disbursing restitutionary funds held in trust for potential claimants, (including states on behalf of injured ultimate consumers) is not a blank check but a well designed procedure of restitution. If change is needed, it should be based on the present procedures and not on an untried, possibly illegal, Bill. Congress should look to the criterion set forth under the Warner Amendment's continuing resolution provisions which identify oil overcharge funds as trust funds not federal or general revenue funds subject to appropriations; and should recognize the restitutionary nexus which must be obtained.

Respectfully submitted,

Jim Mattox

JIM MATTOX
Attorney General of Texas

DAVID R. RICHARDS
Executive Assistant

LARRY J. LAURENT
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ATTORNEYS FOR THE STATE OF TEXAS

NATIONAL GOVERNORS' ASSOCIATION

## Committee Resolution
## on
## Oil Overcharge Refunds

(consistent with policy D-2)

The Governors strenuously oppose any attempt to substitute oil overcharge refunds for regular energy related appropriations. These refunds provide restitution to the public and clearly identified injured parties for past violations of oil price and allocation controls. The federal government only holds these oil overcharge refunds temporarily. Replacing regular federal appropriations with oil overcharge refunds does not provide restitution to injured parties.

Adopted February 1984

# NATIONAL GOVERNORS' ASSOCIATION
# POLICY
# ON
# OIL OVERCHARGE REFUNDS

States are the appropriate agencies for the restitution to the public of overcharge refunds resulting from alleged or actual violations of price and allocation controls, once clearly identified injured parties have been compensated. The federal government should increase its effort to obtain full restitution on behalf of injured parties. It should undertake a major outreach operation to alert injured parties who can be clearly identified. The states are best able to direct the refunds to the benefit of others who may have been injured by the overcharges. The federal government should direct such refunds to the states for further distribution in accordance with the following guidelines: all settlement money must go to specific energy-related and/or transportation energy conservation programs in such manner that funds are redistributed in line with the way they were collected; funds should be redistributed on an equitable or random basis to provide direct benefit to end-users; a limited amount may be used to cover state administrative expenses.

Adopted August 1980; revised August 1982 and March 1983.

**National Governors' Association**

**James R. Thompson**
Governor of Illinois
Chairman

**Raymond C. Scheppach**
Executive Director

TESTIMONY OF

CHARLES GUINN
DEPUTY COMMISSIONER
NEW YORK STATE ENERGY OFFICE

ON BEHALF OF THE

NATIONAL GOVERNORS' ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1984

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

Mr. Chairman, members of the committee, I appreciate this opportunity to testify before you this afternoon on behalf of the National Governors' Association.

At the outset Mr. Chairman, I wish to thank you for your longstanding and aggressive support for energy conservation programs. Your leadership will be sorely missed next year.

Today I would like to discuss the President's proposed FY'85 budget for energy conservation and the proposed legislation on oil overcharges.

I have five major points I would like to stress:

1) The Governors oppose the Administration's proposed legislation to replace regular appropriations for five major state energy programs with oil overcharge refund dollars.

2) We believe that the administrative process is working relatively well at the DOE's Office of Hearings and Appeals (OHA) and should continue. However, the Department of Energy should establish an overall policy that uses the Office of Hearings and Appeals to identify specific injured parties and earmarks the remainder of the funds in each settlement for distribution through state energy programs to the wider class of overcharged consumers.

3) Because the OHA administrative process is working well we do not feel a legislative solution is in order at this time.

4) The administrative process at the Office of Hearings and Appeals should not be delayed by the Administration in order to provide time for a legislative solution, as has occurred recently in the Amoco and Belridge cases.

5) The Governors believe that the State Energy Conservation Program and the Energy Extension Service, slated for elimination in the Administration's proposed budget, are key programs which should continue to be funded in FY 85.

1. "Petroleum Overcharge Restitution Act"

While we have been heartened by reports that the Administration is likely to decide not to submit legislation on oil overcharges, we want to make clear that we would vigorously oppose such legislation if it were submitted. The Administration's draft proposal, "Petroleum Overcharge Restitution Act", will deny injured energy consumers the relief to which they are entitled and instead divert these funds to replace regular federal energy appropriations. While we recognize the need to reduce the deficit, we cannot support a patent attempt to divert oil overcharge refunds from consumers for whom they were intended.

These dollars are called oil overcharge refunds for a reason— they are intended to repay consumers who purchased gasoline and other petroleum products at prices that exceeded the federal oil price ceiling in force between 1973 and 1981. They are analogous to damages in an auto accident and one is hard pressed to imagine a judge deciding to put such an award into the United States Treasury because "deficit reduction was beneficial to you."

This draft legislation treats the oil overcharge funds as if they were federal dollars, which is incorrect. These funds are only held temporarily by the federal government. The government's role is to settle the cases or sue the companies, and then distribute the refunds to injured energy consumers as restitution.

In addition to the fact that the legislation would deny restitution to consumers, the bill also has a number of practical operating problems. First the proposal assumes that $2 billion will be available from oil overcharge refunds in FY'85, yet there is only $400 million in escrow now. Of that $400 million a significant portion will probably be returned to parties who submit claims for direct injuries. In addition, it is unlikely that any of the other pending cases will reach final resolution during FY'85. While the Administration has suggested that it would make up any such shortfall from regular appropriations we would prefer assured funding. Thus, the proposed bill could result in additional delays in the distribution of low income energy assistance and the other programs in FY'85.

A second practical problem with the proposed legislation is that it would skew the distribution of overcharge funds. Overcharge funds are currently allocated to states based on the share of product and crude provided to each state by the company in question. Allocating overcharge monies to replace the existing funding for energy programs will mean overcharges are distributed under the existing program formulas, not on the basis of where the overcharge occurred. This would move even further away from the concept of restitution to the consumers who were overcharged.

2. Office of Hearings and Appeals Procedures

The National Governors' Association supports the present administrative process for distribution of oil overcharge refunds at the Office of Hearings and Appeals. This office first attempts to identify parties who can directly prove that they were overcharged and then refunds money to them. After the identifiable consumers have been repaid, OHA decides how to repay the general range of consumers. The preferred methodology has been for the remaining funds to be sent to the states for distribution through a number of energy programs which benefit these consumers.

We feel that the present OHA process should continue, and that the Congress should provide sufficient support and encouragement for the Office of Hearings and Appeals to do its job well. Establishment of an overall Department of Energy policy supporting this two stage distribution scheme would also increase the efficiency of this office. It must be stressed that these refunds do not go into state budgets, but go directly to energy programs for consumers. The state merely serves as a conduit for these second stage refunds to state energy consumers and the Office of Hearings and Appeals does not allow states to supplant other funding for these programs. This money must supplement existing program funds. In the use of the $200 million in Warner Amendment funds last year the Congress also specified that those oil overcharge refunds be used to supplement and not supplant existing programs. The Administration's proposed legislation and budget turns this principle on its head by supplanting energy appropriations.

3. No need for Legislation

The Governors feel that with a consistent Department of Energy policy supporting the refund approach through the states, and with continuing Congressional support for this approach, a legislative solution is not necessary at this time. Congress should allow the administrative process to continue. The court cases, such as Exxon and "Stripper Well", should proceed without a statutorily mandated remedy.

4. Delays in Pending Cases at OHA

It is our understanding that the Administration has essentially directed the Office of Hearings and Appeals to delay processing state plans for distribution of oil overcharge refunds under the Amoco and the Belridge Oil Company cases. On November 16, 1983 a final decision was issued in the Amoco case in which states were directed to prepare and submit plans explaining how they would spend their portion of a $24 million distribution. These refunds, like all others, must be directed toward energy programs to benefit the consumers who were injured. This decision was issued over three months ago and states have prepared plans and wish to have them approved expeditiously so that benefits can flow to injured consumers. However, the Department has been delaying approval of these plans in expectation of Congressional action on the draft legislation, which could presumably include the funds at issue in the Amoco and Belridge cases. It is our understanding that when an order is signed by the Director of the Office of Hearings and Appeals that it is a final order. However, on January 27, 1984 the General Counsel of the Department of Energy wrote to Secretary Hodel indicating that the Secretary could rescind this final order. We would welcome congressonal examination of the handling of these cases at OHA in order to get the process moving again.

5. State Energy Conservation Program and Energy Extension Service

In FY '84 Congress appropriated $34 million for the State Energy Conservation Program and the Energy Extension Service. Both these programs, as you have long-recognized Mr. Chairman, provide essential support to states in the energy conservation area and help save a great deal of energy. The Administration's budget once again seeks to eliminate funding for these two essential programs. We strenuously oppose this elimination and seek your support to continue appropriations at current levels in FY '85 and beyond. In addition, we would urge continuation of funding for low income energy assistance, weatherization and the schools and hospitals program at FY '84 levels.

We would also like to request the subcommittee's support for a minor regulatory change in the State Energy Conservation Program which would allow states increased flexibility in expending funds under the SECP program. This change would simply remove the current prohibition on using funds for equipment purchases under SECP. The statute in question, the Energy Policy and Conservation Act (PL.94-163), contains no such prohibition. The limitation, found only in DOE's regulations, currently prevents states from creating revolving loan funds and making direct grants for energy conservation improvements. With overcharge funds now being funneled through the SECP, removal of the regulatory restriction would allow states to provide subsidized conservation loans to consumers as part of the restitutionary effort. The change should be limited to financing for individuals so that funds are not used for state and local building retrofits, which do not meet the restitutionary goal.

Mr. Chairman, thank you again for the opportunity to appear before the Subcommittee today. I would be happy to respond to questions.

**National Governors' Association**

**James R. Thompson**
Governor of Illinois
Chairman

**Raymond C. Scheppach**
Executive Director

June 1, 1984

Honorable James A. McClure
Chairman
Subcommittee on Interior
Committee on Appropriations
United States Senate
114 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

The National Governors' Association strongly endorses the continued funding of major energy conservation programs at FY 84 appropriation levels plus three-fourths of the inflation rate. This aggregate $286 million level for the four major state energy conservation programs is consistent with the comprehensive NGA budget policy adopted by the Governors in February. The Governors hope you will support funding for the State Energy Conservation Program, the Energy Extension Service, the Institutional Conservation Program and the Weatherization Assistance Program. State energy offices have played a leading role in implementing energy conservation measures, and Governors are convinced that federal expenditures for these four energy programs remain a prudent investment of federal funds.

In a related matter, the National Governors' Association is steadfastly opposed to any efforts to substitute oil overcharge refunds for regular appropriations in funding Low Income Home Energy Assistance, the Weatherization Assistance Program, and the Institutional Conservation Program. Oil overcharge refunds are monies which have been determined by courts of law or federal administrative agencies to have been improperly collected by oil companies. It is the Governors' position that these refunds should be distributed to injured parties, not used to replace federal appropriations for long-established national conservation programs. For this reason, we oppose the administration's proposed Petroleum Overcharge Restitution Act, S. 2370.

In closing, I would also urge the Subcommittee to provide continued funding for the Energy Information Administration. The State Energy Data System and the Energy Price and Expenditure Data System provide essential data for states in predicting future energy needs and in planning for energy emergencies. Both of these programs are threatened under the FY 85 budget currently proposed by the Administration for the Department of Energy.

States have and will continue to play a major role in this nation's efforts to achieve energy independence. Energy conservation and preparation for energy emergencies are two areas where the state contribution is essential. We look forward to working with you to maintain congressional support for the federal programs which complement these state efforts.

Sincerely,

Joseph E Brennan

Governor Joseph E. Brennan
Chairman
Subcommittee on Energy Conservation
and Power

Oil overcharges

**National Governors' Association**

**James R. Thompson**
Governor of Illinois
Chairman

**Raymond C. Scheppach**
Executive Director

November 3, 1983

The Honorable Donald P. Hodel
Secretary
Department of Energy
Washington, D. C. 20585

Dear Mr. Secretary:

On behalf of the National Governors' Association we are writing to indicate our strong opposition to the Office of Management and Budget's attempt to zero cut FY '85 state energy conservation appropriations levels based on the argument that such funds can be replaced with future oil overcharge refunds.

We oppose this proposed substitution of oil overcharge refunds on two counts. First, as you know, the major requirement of the oil overcharge refund program is restitution to injured energy consumers. Replacing federal funds with oil overcharge refunds does not provide restitution to injured parties in any sense of that word. The federal government only holds these refunds temporarily. Providing restitution requires that citizens who were injured by petroleum overcharges receive direct benefits from the overcharge settlement monies, preferably in the form of energy-related programs providing such benefits. Replacing federal conservation appropriations with overcharge funds would involve no benefit to overcharged consumers. Second, the funds from the major cases pending will not be available before late 1985 at the earliest and therefore, could not substitute for FY '85 appropriations notwithstanding the argument over restitution.

OMB has apparently argued that the $1.6 billion judgment against Exxon, which calls for distribution to the states should be considered when deciding on funding levels for FY '85. The Exxon case is before the Temporary Emergency Court of Appeals, as you know, and a petition for certiorari to the U.S. Supreme Court is probable. As a result no refunds will be returned to the states for distribution to injured energy consumers until mid-1985 or 1986 at the earliest.

We understand that Congressman Dingell has written to you expressing his displeasure at this development as well. We fully support his view that energy funding levels should not be reduced because of oil overcharge refunds. These refunds to injured citizens should not be considered in the appropriations process. You have been supportive of the states' position in the past, both in your public statements and Congressional testimony, and we can only express our desire that you will support us once again on this very important issue.

Sincerely,

Christopher S. Bond
Governor Christopher S. Bond
Chairman
Committee on Energy and Environment

Joseph E. Brennan
Governor Joseph E. Brennan
Chairman
Subcommittee on Energy Conservation
and Power

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

15 YEARS
**National Governors' Association**

James R. Thompson
Governor of Illinois
Chairman

Raymond C. Scheppach
Executive Director

November 3, 1983

Mr. David A. Stockman
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Stockman:

On behalf of the National Governors' Association we are writing to indicate our strong opposition to the Office of Management and Budget's attempt to zero out FY '85 state energy conservation appropriations levels based on the argument that such funds can be replaced with future oil overcharge refunds.

We oppose this proposed substitution of oil overcharge refunds on two counts. First, as you know, the major requirement of the oil overcharge refund program is restitution to injured energy consumers. Replacing federal funds with oil overcharge refunds does not provide restitution to injured parties in any sense of that word. The Federal government only holds these oil overcharge refunds temporarily. Providing restitution requires that citizens who were injured by petroleum overcharges receive direct benefits from the overcharge settlement monies, preferably in the form of energy-related programs providing such benefits. Replacing federal conservation appropriations with overcharge funds would involve no benefit to overcharged consumers. Second, the funds from the major cases pending will not be available before mid-1985 at the earliest and therefore, could not substitute for FY '85 appropriations notwithstanding the argument over restitution.

The $1.6 billion judgment against Exxon, which calls for distribution to the states should not be considered when deciding on funding levels for FY '85. As you well know, the Exxon case is before the Temporary Emergency Court of Appeals, and a petition for certiorari to the U.S. Supreme Court is probable. As a result no refunds will be returned to the states for distribution to injured energy consumers until late 1985 or 1986 at the earliest. This, of course, assumes that the remedy remains unchanged and there are no delays.

We understand that Congressman Dingell has written to you expressing his displeasure at this development as well. We fully support his view that energy funding levels should not be reduced because of oil overcharge refunds. These conservation programs are extremely valuable and the National Governors' Association has supported them in the past and continues to support them. The Institutional Conservation Program (Schools and Hospitals), Weatherization Assistance Program, State Energy Conservation Program, Energy Extension Service, and the Low Income Energy Assistance Program are all vital parts of the national drive to reduce energy consumption and use fuel more efficiently.

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

These refunds to injured citizens should be not considered in the appropriations process.

Sincerely,

Christopher S. Bond

Governor Christopher S. Bond
Chairman
Committee on Energy and Environment

Joseph E. Brennan

Governor Joseph E. Brennan
Chairman
Subcommittee on Energy Conservation
and Power

**National Governors' Association**

**James R. Thompson**
Governor of Illinois
Chairman

**Raymond C. Scheppach**
Executive Director

February 27, 1984

The Honorable Donald P. Hodel
Secretary
Department of Energy
Washington, D.C. 20585

Dear Mr. Secretary:

We are writing to you on behalf of the National Governors' Association in order to bring to your attention concerns over the Department's actions in the oil overcharge area. As you know, the Office of Hearings and Appeals (OHA) issued a final decision and order in the Amoco case on November 16. In that order the Department informed states that they would receive $24 million in oil overcharge refunds for distribution to classes of injured energy consumers. States were directed to submit plans to the Office of Hearings and Appeals, and many states have prepared and submitted these plans. Although the decision was not published in the Federal Register, actual notice was given to the states by mail. DOE obtained the overcharge funds from Amoco in a consent order which is now four years old. Victims are still awaiting restitution. It is incumbent on the DOE to approve the state plans as quickly as possible. Only then will the damages done to the public be at least partially redressed.

Many states have been informed by OHA that there will be some delay in the processing of these plans. We are strongly opposed to any further delays in the disbursement of these funds to the states and believe the plans should be reviewed and approved as quickly as possible. The OHA already determined that for the second stage of the refund procedure, the states are the suitable conduit for providing restitution to the injured parties. On December 23, 1982, the OHA issued a decision and order establishing this procedure. DOE has therefore granted the states vested rights to receive their shares. To now withhold approval of plans which meet the established criteria would not only be acting in bad faith, but would be denying the states and the overcharged customers within their borders the funds to which they are legally entitled.

The President's fiscal 1985 budget request proposed an overall restructuring of the Department's policy for disbursing oil overcharge refunds after identifiable parties receive restitution.

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

The Governors oppose the substitution of oil overcharge refunds for regular energy appropriations since we believe this does not constitute restitution, a sentiment we expressed in a letter to you on November 3, 1983. We are disappointed by the Administration's intention to submit legislation to carry out this substitution and have indicated to Congress our opposition to this approach.

We look forward to hearing from you on these important issues.

Sincerely,

James R. Thomp

Governor James R. Thompson
Chairman
National Governors' Association

Christopher S. Bond

Governor Christopher S. Bond
Chairman
Committee on Energy and Environment

Joseph E. Brennan

Governor Joseph E. Brennan
Chairman
Subcomittee on Energy Conservaton
and Power

CONEG
COALITION OF NORTHEASTERN GOVERNORS

GOVERNOR WILLIAM A. O'NEILL, Chairman
GOVERNOR JOHN H. SUNUNU, Vice-Chairman

March 12, 1984

The Honorable James A. McClure, Chairman
Committee on Energy and Natural Resources
United States Senate
361 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing on behalf of the Coalition of Northeastern Governors to express our strong opposition to the "Petroleum Overcharge Restitution Fund" legislation recently introduced by request of the Administration.

This legislation (H.R. 4972, S.2370) would distribute future and currently held funds generated from the settlement of 1973-1980 oil price control violations in substitution for regular appropriations to the Low-Income Energy Assistance Program, the Low-Income Weatherization Program, and the Schools and Hospitals Program. CONEG believes that the use of these refunds in this manner does not provide restitution to those parties injured by the oil pricing violations. In addition, the uncertain levels of funding provided under this proposal will have a detrimental impact on the quality and effectiveness of the services delivered by the affected programs. CONEG believes this legislation provides an improper and unwise use of these refunds and should be rejected by the Energy and Natural Resources Committee.

We urge your support in opposing the petroleum overcharge legislation. We also seek your commitment to maintaining the Weatherization and Schools and Hospitals Programs and to reauthorizing the Low-Income Energy Assistance Program. These programs have been proven successful in aiding low-income households in the Northeast to cope with the burden of high energy costs.

Sincerely,

Governor William A. O'Neill
CONEG Chairman

Governor John H. Sununu
CONEG Vice Chairman

TENNESSEE
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
ENERGY DIVISION
Suite 710 Capitol Boulevard Building
Nashville, Tennessee 37219
615/741-2994

Dear Representative

I would like to take this opportunity to state that Tennessee's Energy Division opposes HR 4972 the "Petroleum Overcharge Restitution Act."

The proposed Act purports to supplant general treasury appropriations with the petroleum overcharge funds. I was of the understanding that the petroleum overcharge funds are intended to supplement appropriated funds rather than supplant. The proposed Act would also eliminate funding for the State Energy Conservation Plan, and the Energy Extension Service which would be an unacceptable trade-off for the Energy Division.

The Energy Division agrees with DOE's General Counsel that the Department should establish a policy for second stage distribution of overcharge funds. The Energy Division suggests that policy closely reflect the previous methods of distribution (i.e. Warner amendment) and make payments to the states for energy-related purposes.

Thank you for your consideration in this matter.

Sincerely,

Lee Munz
Assistant Commissioner

LM:lw

JIM SASSER
TENNESSEE

United States Senate
WASHINGTON, D.C. 20510

COMMITTEES
APPROPRIATIONS
BANKING, HOUSING AND URBAN AFFAIRS
BUDGET
GOVERNMENTAL AFFAIRS
SELECT COMMITTEE ON SMALL BUSINESS

March 28, 1984

Mr. Lee Munz
Assistant Commissioner
Department of Economic and Community
Development - Energy Division
Suite 710, Capitol Boulevard Building
Nashville, Tennessee 37219

Dear Lee:

Thank you very much for your recent communication regarding H.R. 4972, the Petroleum Overcharge Restitution Act. I appreciate hearing from you.

As you know, I have introduced legislation, S. 131 which addresses the ongoing question of oil overcharge restitution. I believe that the proposed establishment of an oil restitution fund is a backdoor attempt to get the federal government out of the business of assisting poor, elderly, and low-income Americans with their energy bills. I am adamantly opposed to the creation of a restitution fund for this purpose.

I intent to continue to press the Senate to expeditiously complete the oil overcharge investigation and to disburse the overcharge monies to the states. Just recently, I supported the Supplemental Low-Income Energy Assistance legislation. You may be assured of my continued support in this regard.

Again, thank you for contacting me. Please let me know whenever I may further be of assistance.

Sincerely,

Jim

Jim Sasser
United States Senator

STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE
120 STATE STREET
STATE OFFICE BUILDING
MONTPELIER 05602
TEL. 802 828-2811

March 8, 1984

Senator Robert Stafford
5219 Dirksen
Senate Office Building
Washington, D.C. 20505

Dear Senator Stafford:

I am writing in support of S.2287 which requires the immediate disbursement of funds held in the petroleum violation escrow account to the governors or chief executive officers of the states. It also mandates distribution of other funds collected as a result of petroleum pricing violations.

The states have been identified as the best means for restitution of second stage petroleum violation dollars.

The administration has proposed that petroleum violation dollars be placed in a special account in the Department of Health and Human Services for use in energy assistance and conservation programs. This proposal would mean that funds collected by the federal government to provide restitution to the injured consumers who were overcharged would be seized by the federal government and used to replace federal funding for energy programs. The net result of the administration proposal is the use of consumer funds with no added benefit to the consumer.

Historically, the intent of Congress with regard to these funds has been they "supplement and not supplant" money already appropriated for conservation programs.

Also, you may have read recent articles in the Vermont press on the Home Energy Audit Team (HEAT) program. This is a statewide program which provides residential energy audits. A primary funding source has been the oil overcharge funds. In all likelihood, future oil overcharge dollars would be earmarked for this program. In light of this, I urge you to reject the administration proposal and to support the legislation (S.2287) proposed by Senator Pell.

Sincerely,

Richard H. Saudek
Commissioner

RHS/rm

JOHN SPELLMAN
Governor

RICHARD H. WATSON
Director

STATE OF WASHINGTON
WASHINGTON STATE ENERGY OFFICE
400 E. Union, 1st Floor, ER-11 • Olympia, Washington 98504 • (206) 754-0700

February 24, 1984

The Honorable Daniel J. Evans
United States Senator
711 Hart Senate Office Building
Washington, D.C. 20510

Re: Legislation Involving Oil Overcharges

Dear Senator Evans:

Two bills are being considered in Congress regarding the disposition of monies received for alledged oil pricing violations. The legislation submitted by the administration essentially treats these funds as general revenue taxpayer funds to be used to replace the regular appropriation for three state conservation programs -the Low Income Home Energy Assistance, Low Income Weatherization, and Schools and Hospitals programs. S.2287, introduced by Senator Pell, proposes these funds be used in a manner consistent with previous congressional intent as indicated in the "Warner Amendment" (Section 155 of the Federal Further Continuing Appropriations Act of 1983) to make these funds available to the states for energy conservation programs, stipulating the funds must "supplement and not supplant" money already appropriated for those programs.

In introducing his bill, Senator Pell noted some very important points:

- o These funds are being held in trust for consumers who were overcharged.
- o The amount and timing of the overcharge funds are uncertain. If they are used in lieu of taxpayer funds, the continuity and future of the state conservation programs is threatened.
- o Congress has historically appropriated general revenue funds to support these programs, and has directed that overcharge funds not be used to replace these appropriations.

In addition to these points, it should be stressed the courts and the U.S. Department of Energy have consistently agreed that these funds are restitutionary in nature. They are not received through taxes, but as a result of settlements for pricing violations. Considering this, these funds, to the maximum extent practicable, should benefit the consumers of petroleum products. We believe the precedent established by the courts, Congress, and DOE is the correct one, i.e., that the overcharge funds be used to supplement funding for state energy programs.

We have some concerns regarding limiting the channeling of these funds through certain existing energy programs. Specifically, we believe the regulations governing these existing programs place unreasonable restrictions on our ability to provide restitutionary benefit to our citizens. However, the first step in our efforts toward directing these dollars to benefit petroleum consumers is gaining the authority to do so. We believe S.2287 provides for this authority.

We ask your support for S.2287 and would be happy to provide you or your staff with additional information on this important issue.

Thank you for your consideration.

Sincerely,

Richard H. Watson
Director

PW/cg/5-104

cc: Jeff Genzer, National Governor's Association

WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

ED HERSCHLER
GOVERNOR

February 14, 1984

Honorable Malcolm Wallop
U. S. Senator
SR-206 Russell Senate Office Building
Washington, D.C. 20510

Honorable Alan K. Simpson
U. S. Senator
SH-709 Hart Senate Office Building
Washington, D. C. 20510
S
Honorable Dick Cheney
U. S. Representative
225 Cannon House Office Building
Washington, D. C. 20515

RE: Distribution of oil overcharges

Dear Senator Wallop:

As you may know, Wyoming has participated in several recent cases, in conjunction with other states and the Department of Energy, designed to recover vast sums of money overcharged by certain energy companies to consumers during the 1970's. Several of those cases have not yet been resolved. However, based upon the precedent set by similar cases already concluded, Wyoming anticipates further favorable results, and the return of many thousands of dollars in refunded overcharges. We have used these moneys in the past to support a variety of public projects, and I intend to continue that policy with future refunds.

Recently, I have learned that federal legislation may be proposed which earmarks these refunds, recovered through the mutual efforts of the Department of Energy and the states, for a trust fund at the Department of Health and Human Services. Some $2 billion in refunds is expected to be placed in the trust by October, 1984.

The result of this move will be to effectively eliminate repayments due Wyoming and the other states who have fought the overcharge recovery battle. An existing energy-assistance general fund appropriation of $2 billion will be replaced by the $2 billion in refunds. While this may save the federal government money, it does so at the expense of Wyoming and other states.

After all the positive statements on the "new federalism," this recent idea to rob the states of money due them after hard effort seems incongruous, to say the least. Therefore, I am writing to request your personal attention to this situation and to advise you that such a move will be detrimental to the interests of Wyoming citizens.

Thank you for your attention to this important issue. With best regards, I am

Yours sincerely,

/s/ Ed Herschler

EH:amp

cc: Attorney General A. G. McClintock

STATE OF UTAH
NATURAL RESOURCES
Utah Energy Office

Scott M. Matheson, Governor
Temple A. Reynolds, Executive Director
E. James Bradley, Division Director

3266 State Office Building • Salt Lake City, UT 84114 • 801-533-5424

February 28, 1984

Mr. Ronald E. Madsen
SR-135
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Madsen:

In a recent letter to all members of the Utah congressional delegation, the Utah Energy Office sought your support in resisting proposed legislation concerning the disposition of petroleum overcharge escrow funds. The purpose of this letter is to provide additional information and to renew the request for your support.

Petroleum pricing and allocation controls were instituted by Congress in the early Seventies to promote price and supply stability, and to prevent dislocations in the domestic economy attendant to price and supply instability in the wake of the Arab Oil Embargo. Violations of the implementing regulations resulted, in many cases, in the actual and alleged overcharging of end users in sales of petroleum products.

Enforcement actions conducted by the Department of Energy (DOE) have resulted both in the disgorgement of the overcharges by sellers of petroleum and petroleum products and in consent orders by which DOE agreed to discontinue particular enforcement proceedings in return for settlement payments by product sellers. The monies received were placed in DOE-controlled escrow accounts.

DOE is obliged to attempt to identify injured purchasers, and where possible, to refund the overcharges to such purchasers. Due to the structure of the pricing and allocation regulations, the overcharges were, in significant part, passed along to the ultimate product consumers. Direct refunds of overcharges to purchasers have often been made impossible due to the difficulty of determining actual amounts of product purchased by a given purchaser and, in some cases, determining who the purchasers were. Under these circumstances, the enforcement agencies have petitioned DOE's Office of Hearings and Appeals to engage in special refund proceedings, referred to as Subpart V proceedings.

In Subpart V proceedings, OHA has adopted a practice of soliciting applications for refunds from purchasers believing themselves to have been injured. As noted earlier, overcharges were often passed along to ultimate consumers. Direct refunds to ultimate consumers are, generally, not cost-effective. Under such circumstances, OHA has made ultimate consumers' unclaimed and unclaimable shares of the overcharges available to the states for use in programs which benefit ultimate product consumers.

The OHA proceedings may become quite protracted, depending on the particular case. In addition, DOE has observed that remedies for overcharges have not been consistent between the Economic Regulatory Administration, OHA, and the courts. Further, prior to the evolution of OHA proceedings into their present form, there was great difficulty experienced in the effort to provide refunds. Congress attempted to ameliorate this problem through passage of the Warner Amendment to the 1982 Continuing Resolution. Under the amendment, a form of "equitable" restitution was accomplished by distribution of a portion of the mounting escrow funds to the states for use in five specific energy and conservation programs.

Based on the difficulties in administering the refund program, and apparently relying on the Warner Amendment as precedent, DOE has proposed legislation which will establish a restitution fund using amounts of the existing escrow fund not refunded to directly injured purchasers. This remainder represents overcharges presumably born by ultimate consumers through passthroughs. The fund would be used to supplant general appropriations for certain conservation programs. Other programs originally included in the Warner Amendment scheme would not be funded at all.

The proposed legislation is objectionable for the following reasons:

First, the escrow monies were generated by the disgorgement by sellers of unlawful overcharges. The law that sanctioned this disgorgement had, as its purpose, the making whole of persons injured by the overcharges. The proposed use of overcharges as a surrogate for appropriations transforms the practices resulting in the overcharges into de facto tax collections. The concept of taxation, which concerns the obtaining of revenues to fund government operations, is wholely distinct from the concept of restitution, which concerns the disgorgement of ill-gotten gains and the making whole of persons from whom the gains were derived. The transformation of overcharges to taxes would be a departure from the policies underlying pricing regulations and statutory remedies for their violation.

Second, assuming that DOE's proposed use of overcharges is motivated by a desire to expedite restitution similar to the Warner Amendment, the federal determination of which State-administered programs would serve restitutionary purposes represents a great constraint on program development. A federally developed plan specifying restitutionary programs would contradict one often-stated purpose of making overcharges available to the states; that is, the distribution to the states has been based on the perception that the states are best acquainted with and are in the best position to respond to energy needs of their residents. This is, of course, part of the reason for providing for state administration of federal conservation programs. The states should have maximum flexibility in developing programs to assure restitution of consumers injured by the overcharges.

Third, these proposals would make the funding of conservation programs dependent upon the outcome of certain cases presently being litigated. The outcome of these cases is far from preordained, and the appellate process has some likelihood of lasting for several years. This uncertainty of outcome and time frame belie the prudence of basing conservation program funding upon the availability of overcharges from the cases. In addition, even if the money becomes available, it is not clear what the future funding of conservation programs will look like. There is some fear that when the overcharge funds are exhausted, conservation program funding through appropriations will not be returned to a level necessary to assure program efficacy. In view of past efforts to cut funding, this fear is not irrational. The legislative proposal also seeks to provide zero funding for the State Energy Conservation Program and the Energy Extension Service Program. These and other conservation programs have been found by DOE in past reports to be valuable and cost-effective. Destabilization of funding for such programs can hardly be justified solely by a general interest in reducing governmental revenue requirements.

The Utah Energy Office believes that principles of restitution and the singular ability of a state to craft suitable restitutionary programs for the benefit of its residents should be kept firmly in mind. Therefore, I encourage you to make appropriate contacts with DOE and Administration officials, and other members of the Utah congressional delegation to assure that legislative proposals for disposition of petroleum overcharge funds do not treat the funds as federal revenues, and to assure the continued funding of existing energy and conservation programs which are so extremely important in the furtherance of energy security.

Please feel free to contact me if I can be of further assistance.

Sincerely,

Patrick D. Spurgin
Federal/State Coordinator

PDS:ljl

**ARKANSAS ENERGY OFFICE**

One State Capitol Mall • Little Rock, Arkansas 72201
Phone (501) 371-1370

February 22, 1984

The Honorable Dale Bumpers
United States Senate
3229 Dirksen Senate Building
Washington, D. C. 20510

Dear Senator Bumpers:

We would like to bring to your attention a bill, the Petroleum Overcharge Restitution Act, that the Administration is to have introduced before Congress in the near future. This bill would substitute oil overcharge refunds for regular energy appropriations for the Low-Income Home Energy Assistance Program, Low-Income Weatherization Assistance Program, and the Schools and Hospitals Program.

We strongly oppose the Petroleum Overcharge Restitution Act and ask for your support to insure that this bill is not enacted. Our opposition to this legislation is based on the following points:

- The Petroleum Overcharge Restitution Act abandons the principle that efforts should be made to refund these monies to those persons overcharged;
- The allocation of overcharge funds to the three programs enumerated in the proposed legislation is tantamount to putting the money in the U. S. Treasury;
- The previous expression by Congress on the distribution of oil overcharge monies (the Warner Amendment to the Continuing Appropriations Act in December, 1983) stated that oil overcharge funds should, "... supplement, not supplant, funds otherwise available for such programs under Federal or State law." The Administration's proposal would supplant appropriated funds for three energy conservation programs;
- The Administration's failure to appeal the Federal District Court decision regarding the distribution of $1.6 billion in funds from the Exxon case amounts to tacit approval of the court's distribution plan; and
- The release of oil overcharge funds from the Department of Energy does not occur in a timely manner conducive to maintaining a staff or to otherwise meet the financial obligations necessary to operate effective energy conservation programs.

We feel as though the Department of Energy should be directed to follow the prescribed course of first providing direct restitution to those identified as being overcharged and to let the states administer those funds for which

*Arkansas Industrial Development Commission*

injured parties cannot be readily identified. By not following this course and by adopting the Petroleum Overcharge Restitution Act, two events become very predictable: First, those persons overcharged for petroleum products will receive little or no benefit from the restitution; and second, the future of three vital energy conservation programs will be in jeopardy due to funding uncertainties.

Another issue we would like to raise is the Department of Energy's withholding of the distribution of oil overcharge funds from the Amoco ($24 million) and the Belridge ($95,821) cases. The National Governor's Association has advised us that the Department of Energy has been directed by the Administration to not approve any state plans for these two cases. The indication is that these funds are being held "hostage" awaiting passage of the Petroleum Overcharge Restitution Act. We vigorously oppose any attempts to delay disbursement of Amoco and Belridge oil overcharge funds and urge you to see that action is forthcoming on the release of these funds by the Department of Energy.

We appreciate your consideration of these matters and hope that you will assist us in insuring that Arkansans receive the benefit of these funds to which they are rightfully entitled.

We look forward to hearing from you.

Sincerely,

Cherry

Cherry Duckett
Director

CD/MJ/gs

Dcc Jeff [illegible]

Identical letter sent to Byron Dorgan and Mark Andrews

State of North Dakota
EXECUTIVE OFFICE
BISMARCK

ALLEN I OLSON
GOVERNOR

January 30, 1984

The Honorable Quentin N. Burdick
United States Senator
511 Hart Office Building
Washington, D.C. 20510

Dear Senator Burdick:

In recent months, it has become apparent that some members of Congress and the Reagan Administration have identified funds from numerous oil overcharge cases as possible sources of funds to substitute for existing Congressional appropriations for federal energy programs, most notably the Low-Income Home Energy Assistance Program.

I am writing to share with you my opposition to this attempt. My major concern is that substituting these funds for current energy program funding would fail to recognize the principal restitutionary basis of oil overcharge refunds which have as their bases returning to oil product consumers the money unlawfully taken from them by oil companies charging higher prices than provided for by law.

This opinion is shared by many and has been upheld in at least one court case. In the ruling on Citronell-Mobile v. Edwards (TECA Docket Nos. 5-60 and 5-61 decided January 1982), the court found that "payment to the United States Treasury is not restitution in the true sense of the word."

In this regard, I support the National Governors' Association policy that the oil overcharge refunds should provide restitution to injured parties and be in addition to existing federal energy program appropriations. The NGA policy further calls for states to serve as the conduit for restitution to the public of overcharge funds after clearly identified parties are compensated.

I believe the states are the most appropriate entity to facilitate restitution. In addition, it is important that the states, in administering the overcharge refunds, be given broad authority in deciding the program vehicle for providing restitution to their citizens and in administering these funds.

I, therefore, ask you to oppose efforts to substitute oil overcharge refunds for current congressional energy program appropriations, and respectfully request your support in providing states with maximum flexibility and authority in deciding how best to utilize these funds to assure proper restitution to their citizens.

In the interest of the citizens of North Dakota, I would hope efforts can be made to address this issue. Please contact me should you have any questions or wish any additional information.

Kindest regards.

Sincerely,

ALLEN I. OLSON

cc: NGA

February 29, 1984

The Honorable J. James Exon
330 Hart Office Building
Washington, D.C. 20510

Dear Senator Exon:

I am writing to urge your opposition to the "Petroleum Overcharge Restitution Act" recently submitted to the Congress by the Administration. This measure represents a revision of the Administration's position on the return to petroleum consumers of restitutionary settlements to reimburse consumers for overcharges on oil during a time of price controls.

While the history of these restitutionary monies is varied, this proposal represents one of the worst of the many solutions now available to the Congress to redress past inequities. Under the Act, the restitutionary funds held in trust for consumers by the U.S. Department of Energy would be used to supplant Congressional appropriations for the Low-Income Energy Assistance Program (bill-paying administered in Nebraska by the Social Services Department), Low-Income Weatherization Assistance Program (installation of conservation measures in the homes of the poor administered in Nebraska through the Energy Office) and Institutional Conservation Program (installation of conservation measures in public schools and hospitals administered in Nebraska by the Energy Office). These programs, all meritorious in their own right, have deserved and received the support of Congress. But to divert extraordinary restitutionary trust funds through supplantation of appropriations would, in my view, be a misinterpretation of the intent of the settlements and certainly a reversal of the Congress' own actions in the area of energy conservation in the past.

Moreover, I would make a special argument regarding the appropriateness of diverting a large amount of these trust funds to subsidize the energy industry through low-income bill paying. Such an act amounts to returning excess profits to the industry in the form of current profits, especially in those areas of the country where heating oil is in prevalent use. This, I think, is unconscionable. Yet the Petroleum Overcharge Restitution Act would so order the expenditure of some $1.875 billion in trust funds. That is ten times the amount that the act would designate ($190 million) for the truly cost effective measures of the low-income weatherization program which halts the outflow of energy expenditures in a lasting manner.

You have many other options available to you. The Warner Amendment route which led to the disbursement of some $200 million in escrowed overcharge funds last year has been a prudent model which required the Governors to determine expenditures under the same conditions that Congress has imposed on its own energy conservation programs. A bill has been introduced in the Senate by Senator Pell of Rhode Island which would replicate the desireable features of that type of disbursement. The National Governors' Association supports this approach to restitution.

Please know that I am available to discuss this issue with your staff.

Thanking you for your consideration, I am

Yours truly,

Kandra Hahn
Director

KH:jl:331e

JOHN SPELLMAN
Governor

RICHARD H. WATSON
Director

STATE OF WASHINGTON
WASHINGTON STATE ENERGY OFFICE
400 E. Union, 1st Floor, ER-11 • Olympia, Washington 98504 • (206) 754-0700

February 24, 1984

The Honorable Slade Gorton
United States Senator
513 Hart Senate Office Building
Washington, D.C. 20510

Re: Legislation Involving Oil Overcharges

Dear Senator Gorton:

Two bills are being considered in Congress regarding the disposition of monies received for alledged oil pricing violations. The legislation submitted by the administration essentially treats these funds as general revenue taxpayer funds to be used to replace the regular appropriation for three state conservation programs--the Low Income Home Energy Assistance, Low Income Weatherization, and Schools and Hospitals programs. S.2287, introduced by Senator Pell, proposes these funds be used in a manner consistent with previous congressional intent as indicated in the "Warner Amendment" (Section 155 of the Federal Further Continuing Appropriations Act of 1983) to make these funds available to the states for energy conservation programs, stipulating the funds must "supplement and not supplant" money already appropriated for those programs.

In introducing his bill, Senator Pell noted some very important points:

- o These funds are being held in trust for consumers who were overcharged.
- o The amount and timing of the overcharge funds are uncertain. If they are used in lieu of taxpayer funds, the continuity and future of the state conservation programs is threatened.
- o Congress has historically appropriated general revenue funds to support these programs, and has directed that overcharge funds not be used to replace these appropriations.

In addition to these points, it should be stressed the courts and the U.S. Department of Energy have consistently agreed that these funds are restitutionary in nature. They are not received through taxes, but as a result of settlements for pricing violations. Considering this, these funds, to the maximum extent practicable, should benefit the consumers of petroleum products. We believe the precedent established by the courts, Congress, and DOE is the correct one, i.e., that the overcharge funds be used to supplement funding for state energy programs.

We have some concerns regarding limiting the channeling of these funds through certain existing energy programs. Specifically, we believe the regulations governing these existing programs place unreasonable restrictions on our ability to provide restitutionary benefit to our citizens. However, the first step in our efforts toward directing these dollars to benefit petroleum consumers is gaining the authority to do so. We believe S.2287 provides for this authority.

We ask your support for S.2287 and would be happy to provide you or your staff with additional information on this important issue.

Thank you for your consideration.

Sincerely,

Richard H. Watson
Director

PW/cg/5-104

cc: Jeff Genzer, National Governor's Association

March 6, 1984

The Honorable Carl Levin
U. S. Senator
Senate Office Building
Washington, D.C. 20510

Dear Senator Levin:

I am writing to express my concern regarding FY 1985 Executive Budget proposals for several programs which currently help public institutions, small businesses, and private home owners in Michigan cope with high energy costs.

Specifically, the Executive Budget proposes to end funding for state and local energy conservation grants provided by Congress under Title III of the Energy Policy and Conservation Act (EPCA) and Title V of the National Energy Extension Service Act (EES). Further, the President's budget proposes that the low income energy assistance, home weatherization, and the schools and hospitals energy conservation grant programs be funded in the future from oil overcharge refunds rather than from the budget.

Congress, in previous years, has rejected similar proposals from the President, and I hope that you and your colleagues will again reject the Reagan proposal and support stable funding for these programs in FY 1985. The programs are very important to Michigan.

The EPCA and EES grant programs, for example, have made possible the development of Community Energy Management (CEM) programs in 22 Michigan cities: Albion, Alpena, Battle Creek, Berkley, Ecorse, Escanaba, Farmington Hills, Fraser, Grand Haven, Harper Woods, Kalamazoo, Lansing, Marquette, Monroe, Mt. Pleasant, Oak Park, Sault Ste. Marie, Southfield, Traverse City, Van Buren Township, Westland, and Ypsilanti.

The CEM program, to date, has helped more than 15,000 homeowners, 1,200 small businesses, and hundreds of managers of municipal and school buildings cut their energy costs. Each CEM community contributes funding and the many volunteers needed to implement the program. The state assists by providing funds to help cover technical and administrative costs. Federal funds, however, provide the largest part of the resources, and without them, continuation of the program would be impossible.

You are probably aware of the Schools and Hospitals program as provided for under the National Energy Conservation Policy Act (NECPA), but you may not know of the extent to which these grants are helping Michigan communities. This year $1.4 million in federal funds was provided to Michigan hospitals and $3.1 million to Michigan schools. Because administrative machinery for the program was in place, it was possible for us this year to provide to Michigan schools and hospitals an additional $4 million in state funds for energy conservation at no additonal administrative cost. These dollars, both federal and state, were matched at the local level for a total commitment to these institutions of about $17 million, permitting schools and hospitals to retrofit outmoded or worn out heating, cooling, ventilation, and lighting systems. The average energy cost savings will exceed the investment in three years or less for each of the recipient institutions. I am enclosing for your information a list of this year's grant recipients.

There are several problems with the President's proposal. Most importantly, the use of oil overcharge refunds to fund low income home energy assistance, weatherization, and the schools and hospitals program is contrary to the purpose for which these refunds were collected. This proposal is tantamount to directly depositing the refunds in the U.S. Treasury and treating them as federal funds.

Overcharge funds were collected on behalf of those who were overcharged to provide restitution, and they should be paid to persons who can demonstrate that they incurred the cost of the overcharges. We continue to believe that every reasonable attempt should be made to refund these moneys directly to injured parties and that any unclaimed refund moneys should then go to states for energy programs designed to directly benefit those consumers who were harmed.

Thank you for your past interest and support of the EPCA, EES, and NECPA programs. Please give them your support again this year and reject the Administration's attempt to eliminate funding for these most important programs.

Sincerely,

Terry R. Black
Director

enclosure

NEW YORK STATE ENERGY OFFICE
WILLIAM D. COTTER
COMMISSIONER

February 24, 1984

Dear Congressman:

I am writing to ask your support in opposing the efforts of the Federal Administration to use petroleum overcharge restitutionary funds as a funding source for energy programs, as provided in the President's proposed Fiscal Year 1984-85 Executive Budget. I am also writing to express my concern about the absence of funding in the Budget for the State Energy Conservation Plan (SECP) and the Energy Extension Service (EES) programs.

As you know, President Reagan's proposed Fiscal Year 1984-85 Budget requests that $252.2 million be appropriated for the State and Local grant portion of the energy budget. Of that amount, the President's Budget proposes that $238 million in oil overcharge funds be used to fund the Low Income Weatherization Assistance Program and the School and Hospitals program at FY 1984 levels of $190 million and $48 million, respectively. An additional $1.875 billion is recommended for the Low Income Home Energy Assistance Program, which would also be funded from petroleum overcharge recoveries. The Budget requests no money for the State Energy Conservation Plan and the Energy Extension Service programs, which received $24 million and $10 million, respectively in FY 1984. The State of New York's share of the above mentioned programs amounted to about $265 million during the FY 83-84 State Fiscal year. These Federal grant programs have enabled New York State to develop innovative grant programs, conduct technical assistance activities, and adopt legislation, codes and standards which have promoted energy conservation in schools, hospitals, residences and the transportation sector.

While the State Energy Office welcomes the inclusion of several of these State energy programs in the President's FY 84-85 Budget, we urge your support for continued funding of the SECP and EES programs. In addition, the Office firmly opposes the attempt by the Federal Administration to use petroleum overcharge restitutionary funds as a source of funding for ongoing Federally funded energy programs. As you are aware, the overcharge cases involve alleged violations by numerous oil companies of the former Federal petroleum price regulations. The total amount of overcharges alleged in the many cases still pending before the Department of Energy and the Federal courts is in the order of $10 billion.

The State Energy Office believes and has been urging for the past four years that any money recovered by the Department of Energy in these cases is held by the Federal government in trust for those persons who have been injured by the overcharges. Where it is not possible to identify particular persons who have been injured, we believe the money should be distributed to the states for use in energy related programs benefitting injured consumers who have borne most, if not all, of the overcharges. We have consistently argued before DOE and the courts that under no circumstances should oil overcharge revenues, which are held in trust by the Federal government, be

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used to supplant regular Federal funding for ongoing energy programs. We note that Congress adopted the same restriction in the Warner Amendment (the Furthering Continuing Appropriations Act of 1983); further, DOE's Office of Hearings and Appeals has consistently followed this approach in its decisions allocating funds to the states in special refund proceedings held pursuant to Subpart V of DOE's regulations.

The State Energy Office believes that the states remain the best and most appropriate vehicle through which to fashion a cost-effective restitutionary program which benefits injured consumers. The states are most familiar with the energy needs of their citizens and have the best available information to affect the ultimate distribution of benefits in a manner which reasonably matches the extent of the overcharges borne by different classes of petroleum consumers. The wisdom of this approach has been recognized by Congress in its passage of the Warner Amendment, under which $200 million of overcharge funds recovered by DOE were disbursed to the states for the use in one or more of five specific Federal energy programs administered by the states. Further support for this approach comes from the Federal District Court decision in the Exxon overcharge case, in which approximately $1.6 billion has been ordered to be paid to the states for use in the energy programs specified in the Warner Amendment, as a means of providing restitution to overcharged consumers.

To assure that New York's energy conservation initiatives continue, I ask your support in restoring funding in the FY '84-'85 Budget for the SECP and the EES grant programs and in opposing any attempt to use overcharge recoveries as a source of funding in the Budget for these and other energy related programs.

Cordially,

William D. Cotter
Commissioner

Honorable (Variable Insert)

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

JOHN F. KERRY
LIEUTENANT GOVERNOR

LIHE

February 28, 1984

The Honorable Brian J. Donnelly
U.S. House of Representatives
438 Cannon Office Building
Washington, D.C. 20515

Dear Brian:

I am writing to express a serious concern regarding the proposed FY'85 Administration Budget request for the Low Income Home Energy Assistance Program (LIHEAP). This program is scheduled for reauthorization this year, and has provided a successful means of aiding low income citizens to meet the ever-increasing costs of energy. In Massachusetts, combined state and federal funds used for this program total $99.6 million, and over 165,000 households have been served annually since the block grant authorization in FY'82.

The need and demand for fuel assistance in Massachusetts has not diminished over the past seven years since Congress first adopted fuel assistance funding. Oil and gas prices for home heating have skyrocketed in the past ten years, to the extent that some of our low income households must pay up to 50% of their incomes for energy expenses. With the rising cost of home heating oil this winter, and the sustained high cost of natural gas, we do not expect the need to lessen at any point in the near future.

The President's FY'85 budget recommendation attempts to establish a "Petroleum Overcharge Restitution Fund" as the funding source for LIHEAP, for low income weatherization, and for the schools and hospitals program. This fund would distribute receipts from 1973-80 oil price control violatiions as a substitution for federal appropriations for these programs in FY'85. These funds were supposed to provide restitution to injured parties rather than be used as a substitution for federal funding commitment to these critical programs.

In Massachusetts, we cannot depend on the vagueness of such a funding proposal. We need to start the fuel assistance program in early October when the heating season begins, and cannot rely on funding that may or may not be assured. Similarly, for weatherization, we depend on the federal appropriation to guarantee a stable and productive program, one which potentially impact the low income citizens' continued dependency on fuel assistance to pay for energy costs. We cannot afford the loss of federal commitment to the continuity and stability you, the members of the Massachusetts Congressional Delegation, have worked so hard to maintain over the past several years.

I ask your support in opposing the administration's proposal to substitute petroleum overcharge monies for federal appropriation, as well as your continued commitment to an adequate funding level for these programs. Together we can ensure that our low income citizens' energy needs are met. In addition, I would like to take this opportunity to transmit to you the position adopted Sunday by the Northeastern Governors which reiterates our strong opposition to any attempt to substitute oil overcharge refunds for federal appropriations.

Sincerely,

John Kerry
Lieutenant Governor

Enclosures

ED

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

TED SCHWINDEN GOVERNOR
32 SOUTH EWING

STATE OF MONTANA

(406) 449-3712
HELENA MONTANA 59620

March 22, 1984

Dear :

A few weeks ago President Reagan sent Congress a bill entitled the "Petroleum Overcharge Restitution Act." The proposed legislation establishes a "Petroleum Overcharge Restitution Fund" in the Department of Health and Human Services with the money collected from the oil industry for past violations of the petroleum price and allocation controls. Congressional appropriations for three energy programs would be derived from this fund. The Administration's FY 85 budget allocates $190 million for the Low Income Weatherization Program, $48 million for the Schools and Hospitals Program, and $1.875 billion for the Low Income Home Energy Assistance Program.

The Proposed legislation would essentially substitute oil overcharge settlements for current energy appropriations; the recommended funding levels for the three programs are the same as the Congress provided in the FY 84 budget. Such a displacement of federal funds is equivalent to depositing the overcharge refunds in the federal treasury.

In your review of this bill, please consider the fact that the oil overcharge settlements are not federal funds and should not be so treated. The basic premise of the oil overcharge refund process is to provide restitution to injured consumers. Until now, the overcharge funds have first been used to compensate identifiably injured parties. In the second stage of the refund procedure, the balance of the overcharge settlements have generally been disbursed to the states to fund new or expanded energy programs. This distribution method provides restitution, since the states are required to provide services to energy consumers that would not otherwise have been offered and the funds are allocated geographically according to each state's consumption of petroleum products.

The Congress also addressed the restitution issue in the Warner Amendment, which directed the Department of Energy to return $200 million in oil overcharge funds to the states for use in five federal energy programs. The Amendment specified that the funds must be used to "supplement, and not supplant funds otherwise available for such programs under Federal or State law."

Because of the size of the federal deficit, it may be expedient to substitute the oil overcharge settlements for regular federal funds. However, I hope that when you evaluate the proposed legislation you carefully consider the source of the money and the responsibility to use the funds to compensate energy consumers.

Sincerely,

LEO BERRY
DIRECTOR

gln

The Honorable John Melcher
United States Senate
Senate Office Building
Washington, D.C. 20510Senator Melcher!
!
The Honorable Max Baucus
United States Senate
Dirksen - Senate Office Bldg. Rm 5327
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!
The Honorable Pat Williams
U.S. House Office Building
Room 1233, Longworth House Office Bldg.
Washington, D.C. 20515Representative Williams!
!
The Honorable Ron Marlenee
U.S. House of Representatives
Cannon House Office Bldg., Room 128
Washington, D.C. 20515Representative Marlenee!
!

JOHN MELCHER
MONTANA

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Lou [illegible]
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Lee [illegible] File

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United States Senate

RECEIVED
APR 09 1984
MONTANA DEPT. OF NATURAL
RESOURCES & CONSERVATION

March 28, 1984

Mr. Leo Berry
Director
Department of Natural
Resources and Conservation
State of Montana
32 South Ewing
Helena, MT 59620

Dear Leo:

Thanks for your recent letter expressing your concerns about the Reagan administration's proposed "Petroleum Overcharge Restitution Act."

I agree with you that the oil overcharge settlements are not Federal funds. While this bill would essentially deposit overcharge refunds in the Federal Treasury, I do not support this treatment. I believe that the money should continue to be disbursed to the states to fund new or expanded energy programs.

I do not endorse the expediency of substituting overcharge monies for regular Federal funds. I continue to support the use of these funds as a supplement, not a substitute, for funds for such programs under Federal or State Law.

Thanks for informing me as to your position on this matter.

Best regards.

Sincerely,

John Melcher

730 Hart Building Washington, D.C. 20510 (202) 224-2644

National
Consumer
Law Center
Inc. 236 Massachusetts Ave., NE
Washington, DC 20002
(202) 543-6060

Boston Office

Eleven Beacon St.
Boston, MA 02108
(617) 523-8010

November 21, 1980

## COMMENTS RESPONDING TO THE OFFICE OF HEARINGS AND APPEALS' NOTICE ON THE DISTRIBUTION OF OIL OVERCHARGE FUNDS

The Institute for Public Representation*/ and the National Consumer Law Center **/ submit the following comments in response to the notice issued by the Office of Hearings and Appeals (OHA) in the September 10, 1980 Federal Register (45 Fed. Reg. 59627). The comments are filed on behalf of the Institute, the Center, and the Center's low income energy clients, including the Greater Cleveland Welfare Rights Organization, the Massachusetts Union of Public Housing Tenants, and the New York Statewide Senior Action Council, Inc.

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*/The Institute, a law firm/clinical program operating out of Georgetown University Law Center, provides legal assistance to otherwise unrepresented or underrepresented interests in matters involving significant public policy.

**/The Center is a non-profit legal organization established to provide specialized assistance to poor people and their representatives or attorneys in the consumer and energy fields.

## Introduction

Since 1973, the opening of the period covered by many of the audits which led to the settlement funds over which OHA now has jurisdiction, the price of crude oil has risen at a dizzying pace. For example, in 1973, a barrel of crude oil sold for approximately $3.00. Yet, only six years later, OPEC was raising the world price of a barrel of crude oil from $14 to over $20- almost a 40% increase in a single jump. A little over a year later, we are seeing prices ranging into the high $30's.

It was the elaborate system of controls and allocations of the Department of Energy (DOE) which was constructed to limit, and to rationalize, the impact of these price increases. Even in the absence of activity violative of the Department's regulations, however, the impact of the rising cost of oil has been dramatic. For example, the Senate Committee on Labor and Human Resources has estimated that the OPEC price rise in mid-1979 caused nearly a 100 percent increase in heating bills for many Americans. Senate Report No. 96-378, p.2 (October 25, 1979). The Report adds that there had been a 293 percent increase in fuel oil prices between 1972-1979. Subsequent 1979 price increases, of course, greatly magnified this effect upon the average American's budget. And it is no news to the Department that low income consumers have been the hardest hit. Again, focusing only on heating oil which provides among the most tangible signs of cost impact, the Department's Fuel Oil Marketing Advisory Committee*/ has determined that low income households now spend nearly four times the percentage of their income on household energy that median income households do. FOMAC found that low income households, on the average, spend over 20 percent of their income on household energy use. A household using oil in a cold northern state can spend the equivalent of 80-100% of current income to provide fuel during the winter months.

Of course, this impact of oil cost increases is mirrored in countless other consumer purchases, from gasoline to plastics. Hence, it is clear that unjustified price increases or overcharges have had the effect of straining already stretched resources to the breaking point. The interests animating these comments, then, should be clear. Oil overcharges, passed on and ultimately born by the consumer, represent resources rightfully belonging to those consumers and of pressing importance to them. Clearly, on simple policy grounds, we believe that OHA should cast its procedures in such a way to insure that the full benefits represented by these overcharged funds be returned to consumers. The question of a proper mechanism, of course, is an extremely important one.

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*/" Low Income Energy Assistance Programs, A Profile of Need and Policy Options," Fuel Oil Marketing Advisory Committee of the Department of Energy (July, 1980).

Before addressing the precise elements of a refund distribution plan, however, there are a number of preliminary issues which need to be addressed. They include:

(1) Precisely what is DOE's mandate, or authority, with respect to restitution of overcharge funds to consumers?

(2) Can consent order funds collected by DOE properly be turned over to the U.S. Treasury?

(3) What is DOE's authority, or responsibility, to ensure that overcharge funds not specifically claimed provide a benefit for those who, for one reason or another, have not made their individual claim?

(4) What relevant experience exists, under other governmental or private class actions, which can provide guidance on these questions and on the precise procedures and structure of a refund mechanism?

Our analysis leads us to conclude that DOE does have a mandate to ensure that overcharge settlement funds are restored to the consumer. It has a duty to implement a program providing not only for direct refunds to consumers showing that they bore the overcharges, but also indirect benefits geared generally toward helping the consumer overcome the detrimental effects of those overcharges. The goal of this restitutionary program, then, should be two-fold: to provide a mechanism for individuals, if feasible, or classes of consumers to claim refunds; and to assure that these funds provide effective, indirect benefits to consumers where actual cash reimbursement claims do not exhaust the fund. This goal will surely not be met if OHA operates an individual claims procedure and then, after handling all individual claims, simply turns the remaining funds over to the U.S. Treasury. In fact, we believe that such a step would be violative of the law, and in conflict with sound public policy. Moreover, an individual claims procedure, without flexible resort to class claims, would probably be an empty gesture. Our research into comparable distribution efforts clearly confirms what OHA implies in its notice: that individual claims here, if provable at all, will probably encompass only a modest portion of the accumulated funds. But OHA, through a flexible application of class claims procedure, or in its approach to the residue after claims are exhausted, can effectively direct the benefits of DOE's enforcement actions to the affected consumers.

Finally, we believe that emerging developments with respect to consumer class action refund situations provide useful guidance for OHA in its attempt to benefit those consumers. In short, OHA has been thrust into a situation which, while perhaps unique in terms of the ultimate extent of the resources which may pass through its hands, by no means involves breaking new ground. In fact, the effort in which we believe OHA must now engage can be based on valid past experience and will surely be replicated in other settings in the years to come.

## I. DOE's AUTHORITY TO EFFECT RESTITUTION

DOE's authority to effect a restitutionary, or direct and indirect refund remedy through its consent orders, while not identified explicitly as a subject of this inquiry, is clearly a threshold issue of a determinative nature. We note that the U.S. Office of Consumer Affairs has, in a memorandum attached to their comments, provided an able and exhaustive analysis of this subject. Hence, we see no reason to pursue it further.

## II. CONSENT ORDER FUNDS - BENEFITS TO CONSUMERS OR REVERTED TO THE TREASURY?

It has been argued in some quarters that consent order funds should be immediately turned over to the U.S. Treasury, and in fact the Office of Special Counsel only recently proposed a settlement with Sun Oil Company in which the only accumulated moneys ($25 million) would be placed in the Treasury's general funds. See 45 Fed. Reg. 66842 (Oct. 8, 1980). Moreover, OHA's own regulations, 10 C.F.R., Subpart V, 205.287(c), state that funds remaining after payment of expenses of administration and refunds may be deposited in the U.S. Treasury. The validity of the option to deposit funds in the Treasury is, of course, central to this inquiry. We submit that the terms of OHA's regulations in this regard, and the arguments favoring resort to the Treasury, overlook the fundamental point that these are not the U.S. Government's funds, and the fundamental distinction between public and private moneys.

1. The funds belong to consumers, not the Government.

This inquiry must start with the statutory and regulatory basis for DOE's overcharge claims and their settlement through consent orders. The consent order funds have been recovered from firms and individuals who violated the Department's statutes and regulations by charging illegal prices for their petroleum products*/. Central to the authority of the Department is Section 209 of the Economic Stabilization Act of 1970 as amended, 12 U.S.C. Sec. 1904(note)**/. That section was a central basis for governmental action to correct violations of DOE's orders and regulations. Specifically, that section provides, in addition to injunctive relief, that a

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*/ ERA, in its notice soliciting these comments, seems to have recognized that the injured customers are "entitled" to these funds. *See also* 44 Fed. Reg. 8562 (1979) (Supplementary information on Subpart V).

**/ Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. Sec. 754(a)(1), carries Sec. 209 of ESA forward into DOE's current enforcement authority.
In arguing that Sec. 209 and other DOE statutory and regulatory authority mandate a restitutionary remedy, or treatment of funds accumulated, we do not maintain that DOE must fine-tune its distribution mechanism to return specific settlement benefits to consumers of specific products. As indicated in Section V below, it is sufficient if ERA's distribution approach, taken as a whole, assures benefits to the classes of purchasers affected by the overcharges.

"court may also order restitution of moneys received in violation of" such regulations. The thrust of Sec. 209, in contrast to Sec. 210 of the Economic Stabilization Act which authorizes an action for damages by the person suffering the overcharge (not DOE), has been fully explored in the papers filed with OHA by the Consumer Energy Coaliton of America, et al. and need not be further discussed here. Also instructive, however, is the contrast between Sec. 209 and Sec. 208 of that statute, which establishes sanctions in the form of fines and penalties - clearly funds to be deposited in the U.S. Treasury. This contrast has been recognized by the Department in its Subpart V regulations: "The refunds contemplated in these regulations involve only overcharge amounts, not penalties, and consist only of revenues that the firm involved was never entitled to receive." 44 Fed. Reg. at 8564.

This principle, that charges of a violation of the pricing regulations result in funds rightfully belonging to consumers, is repeatedly reflected in the Department's other statutes and regulations. See, for example, the Department of Energy Organization Act, 42 U.S.C. Sec. 7101 et seq., where the basic enforcement mechanism is the issuance of remedial orders (Subchapter V, 7191), and the terms of 10 C.R.F. Sec. 205.1991. As DOE has stated in a number of decisions involving appeals of compliance orders, "an important purpose of any remedial action is to ensure that persons injured by a regulatory violation are fully compensated for the injury that they have sustained." See the cases cited in 44 Fed. Reg. at 6565.*/ The centrality of this remedial, or essentially restitutionary concept throughout the history of oil pricing regulation by DOE and its predecessors is fully set forth in Attachment I to the U.S. Office of Consumer Affairs' Memorandum. We see no reason to repeat it here. Suffice it to say that, on the basis of these statutory and regulatory provisions, the funds OHA now holds are clearly consumers', not the government's funds.**/ As such, very clear responsibilities attach to these funds. Among those responsibilities is the obligation to treat them in a manner distinct from U.S. Government funds. Relevant case law makes this abundantly clear.

The distinction between consumers' money and funds otherwise in the government's possession was dealt with by the Supreme Court in Porter v. Warner Holding Co., 328 U.S. 395(1945), where the Court stated that restitution requires the courts "to act in the public interest by restoring the

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*/ By contrast, the enforcement provision of the Energy Policy and Conservation Act, 42 U.S.C. Sec. 6201 et. seq., provides for civil penalties to be paid to the United States. There can be no question but that these funds accrue properly to the U.S. Treasury.

**/This is a point clearly accepted by the Government Accounting Office whose analysis - we think incorrectly in various regards - has been critical of DOE's consent order actions. See testimony of Milton J. Socolar, GAO General Counsel, before the House Subcommittee on Interstate and Foreign Commerce, October 14, 1986, at p.4

*status quo* and ordering the return of that which rightfully belongs to the purchaser or tenant." *Id*, at 402. The Court also observed, in connection with restitutions' basis in equity:

> And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake...Only in that way can equity do complete rather than truncated justice. *Id* at 398

The court affirmed its decision in *Porter v. Warner Holding Co.* a few years later in *United States v. Moore*, 340 U.S. 616 (1951). Restitution was allowed:

> to give effect to the congressional purposes to authorize whatever order within the inherent equity power of the district court may be considered appropriate and necessary to enforce compliance...In framing such remedies...courts must act primarily to effectuate the policy of the...Act and to protect the public interest.... *Id* at 619.

In implementing this mandate with respect to funds collected by the government in situations similar to that before OHA, the courts have determined that the funds are held in a "constructive trust," pending return of them or their benefits to consumers. See *Emery v. U.S.*, 186 F2d 900 (9th Cir. 1951), cert. denied, 341 U.S. 925 (1951); *Hodgson v. Wheaton Glass Co.*, 446 F2d 527, 535 (3rd Cir. 1971); and the other cases discussed immediately below.

In summary, under these circumstances, the oil overcharge funds are being held for the benefit of consumers. Thus it would take an extraordinary argument, and extraordinary legal justification, to get those funds, unfettered, into the U.S. Treasury. We submit that no such argument or justification exists. In fact, we know of no authority, in DOE's statutes or more generally, which would point to that result.*/

### 2. *The U.S. Treasury is the proper repository only for public moneys.*

Approaching the issue from the other side, we similarly conclude that these funds are beyond the reach of the U.S. Treasury. The Treasury is by definition the repository of "public moneys," not funds belonging to others. *See* 31 U.S.C. 472, and generally 31 U.S.C., Ch. 10. "Public Money" has been defined as "actual *money of the government, as received from the public revenues*, or deposited there by express authority of law and where it remains the specific property of government..." *Branch v. United States*, 12 Ct. Cl. 281,289, *aff'd*, 100 U.S. 673 (1879) (emphasis added). In *Varney v. Warehime*, 147 F.2d 238 (6th Cir. 1945), *cert. denied*, 325 U.S. 882 (1945), *pet. for rehearing denied*, 326 U.S. 805 (1945),

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*/ The Office of Consumer Affairs discusses at length the principle of Congressional ratification or adoption of agency practice, carried forward in agency regulations. We note that DOE regulations under Subpart V have mentioned the possibility of funds being turned over to the U.S. Treasury. The principle enunciated by OCA clearly has no application here, however, because of the absence of post-Subpart V legislative action and of sufficient notoriety and certainty to draw conclusion as to legislative intent. *See generally Zuber v. Allen*, 396 U.S., 168,185-187(1969); *Thompson v. Clifford*, 408 F2d 154,165-166 (D.C. Cir. 1968).

the court described public money as "arising from taxes, customs, etc. which are required by law to be deposited in the Treasury". The court went on to state:

> The mere fact that moneys are received by federal agencies in the lawful exercise of their public functions, standing alone, does not bring them within the constitutional or statutory provision requiring all 'public funds' to be[recovered] into the Treasury and withdrawn only by an appropriation." 147 F.2d at 245.

In this case, the overcharge amounts were recovered as part of an enforcement effort by DOE to protect the rights of injured citizens. The moneys recovered are exactly the type referred to by the court in Varney.

A further review of Chapter 10 confirms our position. For example, overcharge funds cannot be deemed a "fee, charge or price" allowed by 31 U.S.C. Sec 483a, which authorizes Federal agencies to prescribe such fee, charge or price in order to be as fully self-sustaining as possible. 31 U.S.C. Sec 483a." Noone has contended that the consent order funds are fees. Nor could they. See New England Power Co. v. FPC, 467 F.2d 425 (D.C. 1972), aff'd, 415 U.S. 345 (1974). See also Electronics Industries Association, v. F.C.C., 554 F.2d 1109 (D.C. 1976).

However, moneys may properly be deposited in the Treasury in the form of a trust or special fund. See 31 U.S.C. Sec.477, Sec. 725. Thus, 31 U.S.C. Sec. 725p establishes a trust fund account designated "Unclaimed Moneys of Individuals Whose

Whereabout Are Unknown," where the United States is set up as statutory trustee for the rightful owners of moneys deposited in the Treasury. Moneys directed to this account include funds deposited in federal court pursuant to final judgements. See 28 U.S.C. Sec. 2041, Sec. 2042.

The court in Emery v. United States, 186 F.2d 900 (9th Cir. 1951), cert. denied, 341 U.S. 925 (1951), utilized such a trust, on a temporary basis. There the judgement of the district court decreed that the overcharges recovered would be paid to the Treasurer of the United States. "This money was to be disbursed by the United States government to the renters who were the victims of the overcharges. This money is held by the government in trust for these tenants...The tenants may or may not take advantage of their rights under such an arrangment where they are the beneficiaries of this constructive trust." Id. at 902. (Emphasis added). Such an approach, with its temporary nature and duty to distribute, seems applicable here.

Finding no statutory basis for permanent deposit in the Treasury, the question remains whether these funds can revert or escheat to the government's possession. The Supreme Court has defined escheat as "a procedure whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears." Texas v. New Jersey, 379 U.S. 674,675 (1965). There is no basis for an escheat to the government in this situation. Not only is it impossible to characterize these consent order funds as "abandoned property," but there are also classes of consumers who, as "rightful owners," are available to claim their entitled shares. In addition, even if a question remains as to whether this property should escheat to the state, it should be resolved against the state because the escheat process is viewed as a last resort and is generally disfavored by the law. 27 Am. Jur.2d Escheat, Sec., 10 (1966) (1979 supplement).

In a case deciding that the government did not have a right to receive unclaimed funds through escheat (absent pre-emptive legislation) and that the state was the only sovereign so entitled, the Supreme Court stated:

> The government does not...set up any right, title or interest in the present fund adverse to the unknown bondholders. It does not contend that the fund has been or can be escheated to the United States. It agrees with the contention...which we accept as correctly interpreting the applicable federal statutes, that the fund remains subject to the order of the district court to be paid to the persons lawfully entitled to it upon proof of their ownership.

United States v. Klein, 303 U.S. 276, 280 (1938). In another case dealing with escheat, the district court said that "the right (of escheat) is absolute, but the sovereign will not exercise it except in the absence of other owner claimants." Klein v. Brodbeck, 15 F. Supp. 472(E.D. Penn 1934). The court continued:

> Our powers are those conferred by Congress, and Congress has restricted us to awarding the fund to the one who has title to it. Congress has passed no general escheat statute. The state has no title by escheat that can be acquired otherwise than by a compliance with those statutes. (Emphasis added)

*See also Hodgson v. Wheaton Glass Co.*, 446 F2d 527,535 (3rd Cir. 1971), where the court, referring to funds obtained in enforcing the Fair Labor Standards Act, stated:

> If the Court receives the funds under these provisions the money will remain on deposit with the Treasurer of the United States subject to withdrawal, by Court order, on a petition by a claimant. There is never a permanent escheat to the United States.

The Department of Energy does not claim title to the overcharge funds. In fact, DOE has consistently recognized that the injured consumers are the rightful owners and are therefore entitled to the recovered sums. There still is no general federal escheat statute on the books. Nor is there a lack of entitled claimants and beneficiaries. Therefore, escheat is not available to direct the funds to the Treasury.

Doubts about the validity of a form of escheat to the U.S. Treasury seem to have been recognized by Deputy Secretary John F. O'Leary, former Administrator of the Federal Energy Administration (FEA), in his testimony before the House Subcommittee on Energy and Power. In responding to a question posed to the FEA by that Subcommittee, Deputy Secretary O'Leary stated that:

> [W]e believe that consideration should be given under certain circumstances to requiring that the amount of an overcharge be paid to the U.S. Treasury ... While such a device could not achieve restitutions to the persons victimized by the overcharge, the amount of the overcharge would inure to the government, and thereby to all the nation's citizens. (Emphasis added.)

Hearing on H.R. 2788 Before the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., p. 27 (1977). Deputy Secretary O'Leary recognized, however, that his remarks described a proposal which would "require further analysis and elaboration." Id.

We know of no further analysis by DOE, nor positive (i.e. legislative) response by Congress. Moreover, we find no fairness or wisdom in such an approach as a matter of policy, strict legality aside. The consumer, who has suffered the expense of the overcharge, on top of already escalating legal prices, has an understandable interest in obtaining the benefits of those overcharge funds. Moreover, consumers can hardly be expected to find solace in the fact that yesterday's overcharge is funding tomorrow's maritime subsidy or MX missile program. In any event, it would be presumptuous for government to make that option for the consumer.

In summary, because these funds are so clearly consumers' funds within the scheme of the statutes and regulations, as well as on the basis of sound policy, and because they are clearly not public funds and not encompassed by a statutory or other right of government to take them by escheat or some form of reversion, we submit that DOE must assure that all overcharge funds accrue to the benefit of consumers. Moreover, DOE's own regulations, with their reference to an "effective, and equitable" manner of distribution would seem to dictate rejection of a Treasury-deposit approach. See 10 C.F.R. Sec. 205.282(e). Fortunately, there are workable mechanisms which can be adapted for this purpose. For that reason, OHA does not ultimately have to rule on the question of whether, under any circumstances, these funds could escheat to the government.

## III. THE NEED FOR A FULL RESTITUTIONARY REMEDY, OF DIRECT AND INDIRECT BENEFITS

The question remains how the Department is to accomplish the aim of assuring that consumers obtain the full benefits of the overcharge funds. The restoring of the funds, or the benefits derived from them, is the guiding principle. The D.C. Circuit has noted that in overcharge cases, "restitution ordinarily involves a refund for the benefit of all consumers subjected to the excessive rate." United States v. Associated Transport Inc., 505 F2d 366, 369(D.C. Cir. 1974). Put as the District Court in Alabama recently observed in Citronelle-Mobile Gathering, Inc. v. O'Leary, No. 77-101-P at

30 (S.D. Ala., September 15, 1980), "[t]o limit restitution to refunds to those to whom 'damage' *can be proved* would destroy the purpose of the price control regulations and the authorized action by the government under 209 [of the ESA] to seek restitution." (Emphasis added.)*/

OHA has procedures which can, in the face of individual claims, accomplish strict refund aid. 10 C.F.R., Subchapter V. All interested parties would seem to agree, however, that an individual claims procedure will have limited utility. We are speaking of overcharges dating as far back as eight years, spread over numerous products and incurred under circumstances which doubtless assure minimal documentation, limited claims per consumer, even when provable, and hence minimal incentive to go through the claims procedures. As the discussion of actual experience with class action settlements below indicates, even with sizeable claims and extensive publicity and outreach, the response rate may tap only a modest portion of the funds. Here, one would expect the experience to produce even less. Under these circumstances, we rather question resort to the individual claims mechanism at all, especially one relying heavily on documentation. It is for this reason that we found attractive the Consumer Energy Council of America's proposal for the immediate establishment of a program to distribute indirectly the benefits to the affected consumers.

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*/ The same concept is a fundamental principle of class action law. As Newberg points out, "Failure to provide an alternative distribution or [failure to certify a] class action in such a case denies judicial relief to victims of illegal activity where litigation is not economically feasible on an individual basis." 4 Newberg on Class Actions, Sec. 7572, at 92.

OHA has at least recognized the limits of an individual claims procedure, both in posing this inquiry and earlier. Thus, it contemplated "that purchasers and consumers as a class (would be) entitled to refunds." 43 Fed.Reg. at 38548, 38549 (Aug. 28, 1978). Indeed, in a discussion of the mechanics of 205.287(b) requiring administrative costs to be deducted from the corpus of the total fund, the Department noted "that payment of such costs from total funds for the benefit of a class of unidentified injured persons is an accepted practice." 44 Fed. Reg. at 8565. And to leave no doubt that an alternative distribution mechanism should provide for consumer class recoveries, the Department specifically stated that:

> "[t]he regulations in no way preclude the filing of an Application for Refund on behalf of a class... We anticipate that states and non-profit groups may file such class applications on behalf of their citizens and members who would otherwise have no incentive to file." Id

Whether this simple recognition, with a policy of staying within the inherent limits of a class claims procedure, will be sufficient remains to be seen. The critical point, however, is that if the distribution of indirect benefits does not occur as an alternative to a claims procedure (e.g., the CFCA petition), it must occur either through use of a flexible class action concept or through a mechanism disbursing benefits from the residue when the claims process is complete.

Fortunately, the actual process of providing indirect benefits to affected consumers not only is required, but also follows an established path. The two common and generally feasible approaches for providing indirect benefits are, first, allowing a fluid class recovery, and, second, applying the *cy pres* doctrine. Both methods are based on the assumption that a class action should be more than a means for the recovery of individual damages. Rather, class actions may benefit members by terminating the unlawful conduct, deterring similar conduct in the future, forcing the wrongdoer to surrender unlawful profits *and* distributing proceeds in such a way as to benefit all class members. 4 Newberg on Class Actions, Sec. 7572., at 93.

Fluid class recovery distributes the damage fund indirectly to all class members, for example by requiring the defendant to decrease the costs charged to the class for the product or service that is the subject of the suit. See, e.g., Daar v. Yellow Cab Co., 63 Ca.R. 724, 67 Ca.2d 695, 433 P.2d 732 (1967)(fund established as the result of illegal overcharges of cab fares used to reduce future fares). However, when all the sellers in a market are not defendants in an action, requiring price reductions to benefit consumers may in effect provide the defendant a competitive advantage by using the damage fund to subsidize lower prices. Hence, Newberg notes: "[W]hen that result is unavoidable, the court should consider rejecting fluid recovery in favor of cy pres distribution." 4 Newberg §7572, at 94. */

Cy pres translates essentially to "as near as possible." Black's Law Dictionary. Black's goes on to describe it as "a rule of construction... by which the intention of the party is carried out as near as may be, when it would be impossible... to give it literal effect." The cy pres doctrine stems from the inherent power of equity to fashion relief appropriate to meet the circumstances of each case in order to do justice. Pomeroy, 1 Equity Jurisprudence §§ 114-115 (1941).

Application of the cy pres doctrine results in putting the recovered funds to their "next best use." This may involve allocating the funds to other programs designed to maximize

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*/ Moreover, with the phasing out of controls, a fluid recovery distribution may well be simply unworkable.

public benefit, and to groups beyond those identified as bearing the immediate overcharge. Thus, in Texas Eastern Transmission Corp. v. Federal Power Commission, 414 F.2d 344 (5th Cir. 1969), the court held the FPC could award refunds resulting from disallowed rate increases to distributor customers who would be directed to turn them over to the ultimate consumers, rather than to pipeline carriers who had in fact been overcharged. This was permitted even though the pipeline carriers had not "passed on" the rate increases to consumers. The court accepted the FPC's reasoning that the primary purpose of the Natural Gas Act was to protect the ultimate consumers of natural gas from excessive charges, and "the Act must be applied so as to protect their collective interests." Id. at 346-47. The court stressed that the Act did not expressly require that refunds be made only to those who paid unlawfully high rates since such a narrow construction would make it impossible to effectuate the purposes of the Act. Id. at 348. See also Federal Power Commission v. Interstate Natural Gas. Co., 336 U.S. 577, 581 (1949)(discussion of the purpose of the Natural Gas Act and the court's duty to make disposition of the fund in accord with equitable principles).

The seminal application of cy pres involving a large consumer class distribution plan, is West Virginia v. Charles Pfizer & Co., Inc., 314 F. Supp. 710 (S.D.N.Y. 1970), aff'd, 440 F.2d 1079 (2d Cir. 1971), cert. denied, 404 U.S. 871 (1971).

There, the court approved a proposed settlement of an antitrust action against several drug companies which had been brought by numerous classes of plaintiffs, including state and local government entities, wholesale and retail druggists, and consumers. Any plaintiff accepting the settlement was free to present to the court a proposed plan for allocation of the global settlement amount. Id. at 723. The Alabama Plan, ultimately adopted by the court, allocated the $100 million settlement offer proportionately among the various classes of plaintiffs, each division being subject to later reduction to reflect those plaintiffs who opted out of the settlement. Id. at 727.

The Alabama Plan gave top priority to government entities suing on account of institutional purchasers since the amount of their awards could be computed with reasonable accuracy. Wholesalers and retailers were awarded a minimal amount plus accrued interest as a "nuisance value" to appease them so that they would join in the settlement, even though most of the overcharges were passed on to consumers. The $37 million remaining for consumers was subject to individual claims for a period of ninety days. Also, claims on behalf of classes could be made beyond this time, as part of a "second stage allocation plan." After the individual claims were made, the balance of the fund was to be used for a public health purpose as proposed by the various plaintiff classes, subject to approval by the court. The court noted that it "should exercise its equitable control over these funds for the benefit of all consumers." Id. at 728.

The plan implemented in the Pfizer case used the plaintiff class structure to proportionately distribute the consumer fund after individual claims were collected. The settlement provided that the states could recover on behalf of the consumer class without requiring any affirmative indication from individual members that they wished to assign their claims in this manner. West Virginia v. Charles Pfizer & Co., Inc., 440 F.2d 1079, 1091 (2d Cir. 1971). The Second Circuit affirmed the use of Rule 23 of the Federal Rules of Civil Procedure, which permitted the states and cities to act as consumer class representatives for individual purchasers, as "the only practical way that individual consumers would recover." Id. at 1090.

Two of the settlement notices stemming from the Pfizer decision proposed to use the excess money for public medical programs. In Mississippi v. Charles Pfizer & Co., Inc., Civ. Action No. 68 Civ. 1625 (M19-93)(S.D.N.Y. Sept. 7, 1972), the money was to be used to assist indigent kidney patients within Mississippi by alleviating or eliminating the cost of supplies necessary to sustain their treatment and for the purchase of additional kidney machines if needed. In New York v. Charles Pfizer & Co., Inc., Civ. Action No. 68 Civ. 845 (M19-93) (S.D.N.Y. 1972), the fund was to be used for two other specified medical programs. Other plans submitted by the various states and entities would use the excess money for such purposes as drug abuse control and rehabilitation, training of crippled children, solid waste pollution control, and other public health purposes. *See* Shapiro, David L., "Processing the Consumer Claim," 41 Antitrust L.J. 257, 261 n.12 (1972). */

The District of Columbia Circuit Court has also recognized the desirability of effecting consumer class restitution when it is impossible to identify all individuals injured. In *Bebchick* v. *Public Utilities Commission*, 318 F.2d 187 (D.C. Cir. 1962)(en banc), *cert. denied*, 373 U.S. 913 (1963), the court rejected defendant's argument that an action to recover eleven months of five cent overcharges for bus rides should be dismissed because there was no feasible way to pay the money back to the consumers who were actually overcharged. Instead, the D.C. Circuit ordered that the illegal profits be used to delay a five cent approved fare increase until the fund was exhausted, thereby benefiting all future bus riders during the relevant period. The court stated: "It is not feasible to require refunds to be made to individuals who paid the increase. Nevertheless, the amount realized by Transit from the increase must be utilized for the benefit of the class who paid it, that is, those who use Transit." *Id.* at 203-04 (Supplemental Opinion). **/

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*/ *See also Turnoff* v. *N.V. Nederlandsche Combinatie Chemische Industrie*, Civil Action No. 69-1883 (E.D. Pa. June 25, 1973) (anti-trust price fixing action on behalf of wholesale and retail druggists where the settlement provided that the surplus funds were to be used for the public benefit). *See* Newberg on Class Actions § 5520d, at 463 n.48.

**/ Two related cases following the *Bebchick* decision also required indirect restitution to be made for the benefit of the injured class. *See* *Democratic Central Committee* v. *Washington Metropolitan Area Transit Commission*, 485 F.2d 786, 826 (D.C. Cir. 1973) and *Williams* v. *Washington Metropolitan Area Transit Commission*, 415 F.2d 922, 954 n.121 (D.C. Cir. 1968).

For further discussion of the case law providing *cy pres* approaches to implementation of restitutionary or refund obligations, *see* *Market Street Railway Co.* v. *Railroad Commission*, 28 Cal. 2d 363, 171 P.2d 875 (1946), and the cases cited on pp.2 and 3 of Attachment II to the Office of Consumer Affairs' memorandum accompanying their comments.

## IV. RELEVANT EXPERIENCE FROM OTHER CLASS RECOVERIES

Other recent class recoveries or efforts to distribute the benefits to a broad group of people should provide useful guidance to OHA in its task of designing an alternative refund mechanism for the consent order funds. An analysis of two of these class action distributions in particular suggests that OHA should not allow a disproportionate portion of the funds to be used for administrative costs in an effort to reach injured individuals, as opposed to providing indirect benefits for the injured class.

The Federal Trade Commission is currently monitoring a consumer refund proceeding to distribute approximately $1.5 million obtained in a settlement with Ryder Systems, Inc. After Ryder made false claims in connection with its truck-driver training school, the FTC required it to locate those students who relied upon those claims and to reimburse them for their tuition costs.*/ Out of approximately 16,000 potentially eligible recipients, only 175 were actually located and deemed eligible to receive the refund. The average reimbursement awarded was $450. The FTC had required Ryder to invest extensive administrative resources, costing more than the actual reimbursements awarded, in an effort to located all eligible recipients. [*/] To date, only $100,000 of the $1.5 million obtained in settlement with Ryder has been actually refunded to eligible consumers.

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*/FTC Order No. C-2915, 90 FTC 921 (December 28, 1977).

Another class refund proceeding resulting in extremely high administrative costs, yet reaching only a small portion of the eligible recipients, involves Housing and Urban Development public assistance funds. The refunds came from a settlement of court actions alleging that HUD illegally raised the rents of tenants in 4,800 housing projects to cover increases in utility charges and property taxes. [**/] The settlement covers the period between February 1975 and September 1977. According to Patricia Tenoso of the Western Center on Law and Poverty in Los Angeles, there are roughly one million potentially eligible recipients. The average reimbursement to be

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[*/] Telephone conversation with Ruth Sacks, Consumer Protection Office of the Federal Trade Commission, November 21, 1980. More detailed information is available in Ryder's Compliance Report filed with the FTC in 1979. Contact Public Reference Branch, FTC, Room 130.

We are not aware of any alternative plans being developed by the FTC for the unclaimed funds. Current plans seem to be to redouble efforts to locate individual claimants.

[**/] See Dubose v. Harris, 82 F.R.D. 582 (D. Conn. 1979). Specific details of the refund distribution plan are contained in an earlier report of the Special Master, 4 Class Action Reports 147 (1975).

awarded is $270. So far, over $1 million has been spent to reach only 275,000 of those eligible. These efforts have entailed the hiring of Price Waterhouse to handle the claims procedure and J. Walter Thompson to provide publicity. Ms. Tenoso expects that up to $7 million will be spent before a more significant portion of the HUD tenants are located.

As disappointing as these two refund efforts might be, an instructive distinction lies between the Ryder Systems and HUD distribution proceedings and the distribution problem being considered by FEA. In the Ryder and HUD cases, the class of potentially eligible recipients is relatively easy to identify (though not necessarily easy to locate). In addition, the refunds to be awarded to individuals in these proceedings were relatively substantial (average $450 and $270 respectively). In this consent order proceeding, on the other hand, the class is extremely difficult to identify and the refunds to be awarded, while probably varying substantially, will generally be quite small and difficult to ascertain. Therefore, we submit that it would be difficult to justify using a significant portion of the consent order funds in an attempt to locate injured individual consumers since this attempt will predictably prove to be relatively unsuccessful. Similarly, we submit that this experience argues persuasively for concentration on a cy pres solution which assures indirect benefits to the injured class.

Realizing the practical difficulty, if not impossibility, of identifying and locating significant numbers of eligible recipients, alternatives for conducting refunds or distributing benefits on a class-wide basis have been applied or are being explored in other settings. For example, the FTC developed an innovative restitutionary remedy in a proceeding involving several corporations engaged in the plastics business. [*/] These corporations sold plastics, used to produce building materials (flooring and wallboard), with oral or written representations that the materials were non-flammable. After finding that this representation was false, the FTC entered an order requiring the respondents, in addition to ceasing such representations, to establish a $5 million trust fund for the benefit of all consumers of these plastics. The fund was used for a research program to develop appropriate safety standards to minimize safety hazards resulting from the use of these products. The FTC Order provided for the appointment of a "Products Research Committee" to coordinate and manage the research program. (A more detailed description of this program is contained in an excerpt of the FTC Order,attached as Appendix A).

Another innovative example of providing an injured class substantial, although indirect benefits took place in Virginia a few years ago. Allied Chemical Corporation was fined $13.2

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[*/] In the Matter of the Society of Plastics Industry, Inc. Docket No. C-2596 (November 4, 1974).

million for polluting the James River with Kepone. Federal Judge Robert Mehrige of Virginia agreed to reduce Allied's fine by $8 million after Allied undertook to use this money to benefit the people of Virginia by improving its environment.[*] This fund, which became known as the Virginia Environmental Endowment has been used for environmental mediation, ecological research and local environmental improvement. [**]

Finally, several innovative plans have recently been proposed for the use of $12.3 million obtained from Levi Strauss in an antitrust action. [***] One proposal provides for establishment of a common fund to be administered by a Board of Directors. This Board would consist of equal numbers of representatives of the public and the government. The fund would be used to serve the consumer class, by conducting antitrust research and litigation. [****]

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[*] United States v. Allied Chemical Corp. et al. Crim. Action No. 76-0129-R (February 1, 1977).

[**] See detailed report describing this Endowment fund, attached as Appendix B.

[***] State of California v. Levi Strauss, No. 739-024 (Superior Court, California).

[****] For more information on this plan, contact Robert Gnaizda, Public Advocates, San Francisco, California.

These latter approaches provide a preferable alternative to a costly individual refund mechanism. By recognizing the practical difficulty of locating individuals entitled to refunds, these class-wide approaches lead to a more economical and beneficial use of the funds. OHA should draw upon this experience, to develop an effective distribution mechanism providing class-wide benefits. This could be done through a flexible application of class action concepts to the existing Subpart V procedures, or in implementing the terms of § 205.287(c) under a special procedure tailored to the needs of restitution through indirect benefits.

## V. SPECIFIC SUGGESTIONS ON THE DISTRIBUTION MECHANISM.

In the petition of the Consumer Energy Council of America, as well as a number of the comments filed, OHA has been provided valid and concrete suggestions on how to establish a distribution mechanism going beyond individual claims. Should OHA decide not to adopt the proposal of the Consumer Energy Council of America, we suggest that the views expressed by the U.S. Office of Consumer Affairs and the States of New York, Indiana and Iowa provide the basic makings of an effective and efficient system. In particular, the Office of Consumer Affairs has provided apt suggestions for the precise mechanism to be used -- an Administrator and the Trust Disbursement Advisory Board, */-- and

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*/ The one addition we would make regarding the latter is to include Federal government officials in its make-up. With the Federal government's experience with a variety of energy programs, officials from such agencies as HUD, DOE, and CSA could make a real contribution.

for the adaption of the Subpart V procedures for class claims. New York, et al, have provided more concrete guidelines on what criteria should be followed and the types of programs which should be adopted as conduits, to distribute the funds' benefits back to consumers.

We endorse those suggestions and see no reason to repeat them here. We should, however, touch upon supplemental points. First, as is clear from the discussion above, we are skeptical of an approach laying great stress on individual claims. We fear it is an exercise in futility. To the extent a substantial effort is made to encourage individual claims, we urge OHA officials to draw upon the FTC/Ryder and HUD/Western Center for Law and Policy experience, discussed above. Also, see Shapiro, "Processing the Consumer's Claim," 41 Antitrust Law Journal 257 (1972). Moreover, we suggest that a firm ceiling be placed on the administrative costs for individual claims at the outset, and that the costs and time frame not be allowed to inch forward on the basis of a weak response to date. Finally, the oil companies, with their records and expertise, should be pressed into assisting in the effort, through providing bill stuffers, etc. designed to reach their customers who may have suffered the overcharges.

Second, class representatives can be selected on the basis of associational standing or class action concepts. We see nothing wrong with state governments performing a representative role, yet we do not think that such a role should be in any sense exclusive. Similarly, while the funding of existing programs is attractive for reasons relating to start-up costs and the extent of overhead, this cannot be an exclusive aim. New or innovative efforts, as well as privately run ventures, can have a very significant impact upon consumers and should be given an opportunity. Accordingly, while low administrative costs is an objective, the better approach would be to focus on the ratio of costs to benefits provided.

Third, allocation of benefits among the state should be made on the basis of the volume of products sold in the state, and funding should be earmarked for the class of consumers affected by the overcharge, i.e. heating oil users, not natural gas users. But we do not think the Administrator should be unduly restricted by requirements that benefits be finely targeted to the users of a particular product or brand line. To be workable, the process must be flexible, and the Administrator must be able to take certain actions with respect to particular settlements, knowing that a balance in benefits must come out of the handling of all the settlement funds as a group.

Finally, the types of programs to be supported are to be arrived at by looking to the purposes of the various Acts giving rise to DOE's authority in this area.

## CONCLUSION

We appreciate OHA's careful consideration of these observations and comments. We hope they will assist OHA in developing a meaningful mechanism to provide benefits to the consumers who have suffered from the overcharges. As a corollary, we trust they will help convince OHA that deposit in the Treasury is not an acceptable approach.

Respectfully submitted,

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